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4 SELECT COMMITTEE TO INVESTIGATE THE
5 JANUARY 6TH ATTACK ON THE U.S. CAPITOL,
6 U.S. HOUSE OF REPRESENTATIVES,
7 WASHINGTON, D.C.

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11 DEPOSITION OF: KENNETH CHESEBRO

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Wednesday, October 26, 2022

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Washington, D.C.

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20 The deposition in the above matter was held via Webex, commencing at 1:09 p.m.

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Present: Representatives Aguilar, Lofgren, and Murphy.

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2 Appearances:

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4 For the SELECT COMMITTEE TO INVESTIGATE

5 THE JANUARY 6TH ATTACK ON THE U.S. CAPITOL:

6

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9 [REDACTED] SENIOR INVESTIGATIVE COUNSEL

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15

16 For the COMMITTEE ON HOUSE ADMINISTRATION:

17 [REDACTED] COUNSEL

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19 For THE WITNESS:

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[REDACTED]

It is 1:09 p.m. on October 26, and this is a deposition of Mr. Kenneth Chesebro conducted by the House Select Committee to Investigate the January 6th Attack on the United States Capitol pursuant to House Resolution Number 503.

At this time, I'd like to ask you, Mr. Chesebro, to introduce yourself, stating your full name and spelling your last name for the record.

The Witness. Yes. The full name is Kenneth John Chesebro, last name C-h-e-s-e-b-r-o.

[REDACTED]

Thank you very much. And at this time, I'd like the reporters to swear the witness, please.

The Reporter. Do you solemnly declare and affirm under the penalty of perjury that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

The Witness. I do.

[REDACTED]

And I see, Mr. Chesebro, that you have counsel with you today.

Counsel, Adam, if you could introduce yourself and anybody else who's with you.

Mr. Kaufmann. Thank you, [REDACTED] Yeah, Adam Kaufmann, K-a-u-f-m-a-n-n, of the law firm Lewis Baach Kaufmann Middlemiss. Also in the room with me, although not on video, is Diane Camacho, C-a-m-a-c-h-o, who is also an attorney in my firm.

[REDACTED]

Thank you very much. This is going to be a staff-led deposition, which means that either I or my colleagues will be doing primarily leading the questioning.

We do have Ms. Lofgren on, and other members are permitted to join as well. And if they have any questions, we'll turn the floor over to any of them. Typically, the

1 way that will happens, just for your awareness, would be that they turn on their cameras,
2 and then we would defer to them if they have anything to add.

3 As I mentioned before we went on the record, my name is [REDACTED] I'm a
4 senior investigative counsel for the committee. And also in the room with me today are
5 [REDACTED] professional staff member, to my right; and to my left, [REDACTED]
6 investigative counsel; and to his left [REDACTED] investigative counsel.

7 If anybody adds or joins from the committee virtually, I'll let you know about that
8 as well, primarily the members, and I'll do my best to update you there. Currently, we
9 do have other staff from the committee, including our chief clerk [REDACTED] logged
10 into the deposition as well.

11 Under the House deposition rules, neither the committee members nor staff can
12 discuss the substance of testimony you provide today unless the committee approves its
13 release. And you and your attorneys will have an opportunity to review the transcript
14 once we're done.

15 Before we do begin, though, I do want to go over a few of the ground rules.
16 We're going to follow the House deposition rules that were provided to you and your
17 counsel with the subpoena. And under those rules, counsel for other persons, other
18 witnesses or otherwise, are not permitted to attend.

19 And so, I did get from Mr. Kaufmann others with him in the room. And, Mr.
20 Chesebro, I just ask you to confirm that there's nobody else in the room but you.

21 The Witness. Yeah, just me.

22 [REDACTED] And you're not aware of anybody else who is listening in or
23 participating. That is correct?

24 The Witness. No, no.

25 [REDACTED] Okay. There is an official reporter. There's actually a couple of

1 them listed on the Webex platform there. They're going to be taking the official record
2 of the deposition/ and although there's more than one listed, only one will be taking the
3 official record at the time.

4 I'm sure you're well-aware of this and how reporters take down transcripts of
5 things, but I'll just remind you that because it is being taken down via stenography, that
6 you provide audible, verbal answers to all questions. And if you shake your head or
7 make some other gesture, I may just ask you to restate your answer so that we can
8 capture it appropriately in the record.

9 We do ask that you provide complete answers based on your best recollection.
10 And if the question is not clear, please ask for any clarification. If you don't know the
11 answer to something, please say so, that's fine, and we will move on.

12 You can only refuse to answer the question to preserve a privilege recognized by
13 the select committee. And if you do refuse to answer a question based on a privilege,
14 staff can either proceed with the deposition or seek a ruling from the chairman on the
15 objection. But if the chairman were to overrule an objection, you would be required to
16 answer.

17 And I understand you have a letter with an explanation about an intent to assert
18 Fifth Amendment rights. And that is slightly different than the privilege issue I just
19 mentioned before, but I did want to make sure that you're aware of all of the ground
20 rules that apply.

21 I do want to remind you that it's unlawful to deliberately provide false information
22 to Congress. Since this deposition is under oath, providing false information could result
23 in criminal penalties for perjury and/or providing false statements.

24 Is there anything that we went over that you don't understand or you have any
25 questions about?

1 The Witness. No, I think it's clear. Thank you.

2 [REDACTED] Okay.

3 [REDACTED] And logistically, just let us know if you need a break or would like to
4 discuss anything with your attorneys, and we can certainly go off the record and permit
5 you whatever time is necessary for you to do that.

6 The Witness. Thank you.

7 [REDACTED] We did receive a letter from your counsel this morning,
8 Mr. Kaufmann. We're going to enter it into the record as exhibit No. 31. We'll give
9 you an opportunity before we get into questions, though, to make an opening statement
10 or say anything about that letter otherwise before we get started.

11 So I'll turn it over to you or Mr. Kaufmann if you have any remarks you'd like to
12 give.

13 Mr. Kaufmann. If I may briefly, [REDACTED] you know, as we outlined in the letter, Mr.
14 Chesebro is faced with a tremendous amount of jeopardy for someone who was simply
15 doing his job as a lawyer. There are the two grand jury investigations ongoing in Fulton
16 County, Georgia, and by the Department of Justice.

17 And equally, Mr. Chesebro finds himself being vilified in the press, and there are
18 submissions to Bar committees suggesting that he be forced out from the Bar.

19 And all of this brings us to a point before the committee where there's a couple
20 of -- there are a number of constraints on him. One that we -- you and I have discussed
21 at some length is the attorney-client privilege and his ethical obligations of confidentiality
22 under the ethical rules for all attorneys.

23 And, as we've discussed, he has been expressly instructed by the Trump campaign,
24 which was his client, to maintain in full force any applicable attorney-client privilege or
25 confidentiality obligations. And so, absent some type of order to the contrary, he is

1 ethically bound, at this point, to follow that advice.

2 In addition, because of the different public reports, political reports, ongoing law
3 enforcement investigations, there's a lot of crosscurrents at work, and a lot of interest
4 being paid to Mr. Chesebro.

5 And for those reasons, we have advised him that it is necessary for him to invoke
6 his Fifth Amendment protections at various times throughout the deposition and, of
7 course, we'll see how that progresses.

8 I should note that having said that, we have turned over to the committee a
9 number of documents that we felt there was no privilege that attached that were not
10 subject to any attorney-client privilege. And we had previously discussed whether there
11 was an act-of-production Fifth Amendment privilege for Mr. Chesebro.

12 You know, as part of his effort to be as -- I would say as cooperative as he can,
13 given the circumstances that I've described, we've not invoked any act-of-production
14 privilege so that he is able to continue to comply with the document production order.
15 And we do continue to work with the campaign to determine whether there are
16 documents that are not privileged that, therefore, should be turned over to the
17 committee.

18 I just think it's important that the record reflect this -- the events that surround
19 the deposition today and that it has been advice of counsel that leads Mr. Chesebro to
20 invoke the Fifth Amendment in certain areas as we go forward. Thank you.

21 [REDACTED] Yes, thank you, Mr. Kaufmann. I appreciate those comments.
22 You're right, we have received some documents from you and Mr. Chesebro, and we look
23 forward to continuing to work through that process if there's any clarification on your end
24 what you're able to determine with respect to any applicable privileges.

25 I do know the attendant privilege issues are something that we have discussed

1 and are working through to some degree, and there's some questions I know that you
2 have and that we have as well about the client and the scope of the representation that
3 govern some of the discussions that we've had. So we do have some questions
4 throughout here that hopefully we can elicit some helpful information about that.

5 And we also understand the position that you're in and that you've represented to
6 us in your letter about the discussions that you have had or recommendations you have
7 had -- I don't want to characterize them -- about the Fifth Amendment and how it might
8 apply here.

9 So, with that, I think we can get into the questions unless there's anything else.

10 Mr. Kaufmann. Thanks, [REDACTED]

11 [REDACTED] Certainly.

12 EXAMINATION

13 BY [REDACTED]

14 Q Okay. So what we're going to do throughout this deposition is put a few
15 exhibits up on the screen or show you an exhibit, rather, on the screen in front of you so
16 you'll be able to see it. And let us know if it pops up for you, if you have any trouble
17 seeing it.

18 But we're going to first bring up exhibit No. 1, and that's going to be the subpoena
19 that we issued, or the select committee issued for your attendance ultimately today.

20 So are you able to see what's up on the screen as exhibit 1?

21 A Yes. The subpoena dated July 22, which I read. I'm familiar with.

22 Q Okay. The subpoena itself is dated July 14th. You're exactly right, though,
23 that the first date of production there is July 22nd --

24 A Right, July. I received it sometime in July.

25 Q Yes, okay, very good. And do you understand that you're appearing

1 pursuant to that subpoena today?

2 A Yes, I am.

3 Q Now, my goal is to ask questions that are relevant to the investigation with
4 the hope that you'll answer, understanding, just like the conversation that Mr. Kaufmann
5 and I just had on the record, that you may assert your Fifth Amendment rights or other
6 privileges that could apply.

7 But I will try to seek the basis for each objection that you might have, and we'll
8 just go through that and work through that process as we proceed throughout the
9 deposition.

10 Mr. Aguilar. I will note for you, Mr. Chesebro, that Mr. Aguilar, a member of the
11 select committee, has recently joined us as well.

12 Thank you for being here, Mr. Aguilar.

13 BY [REDACTED]

14 Q The subpoena that we just showed as exhibit No. 1 required the production
15 of documents described in the schedule attached to the subpoena.

16 Did you understand that, Mr. Chesebro?

17 A Yes, I did.

18 Q And your counsel has produced to the committee a handful of emails that
19 involve certain Republican electors in States that former President Trump lost in the 2020
20 election, but other documents were withheld based on assertions of attorney-client
21 privilege or related privileges.

22 Do you understand that as well?

23 A I don't know the particulars of the privilege laws, but I do know that
24 there's -- I haven't reviewed that, but I do know that there's been certainly withholding
25 based on particular privileges or confidentiality provisions.

1 Q Okay. Fair enough. Are you aware of any other nonprivileged documents
2 that are responsive to the subpoena that you have and that you haven't provided to the
3 committee?

4 A As I believe I indicated, I'm not sure to who that was reviewing this, in late
5 September, I -- I finished collecting all documents from any source I could find, except
6 there were certain paper documents, not a large volume and probably duplicating most
7 of the electronic documents that have already been provided to my lawyers and with the
8 privilege log, certain paper documents I had mailed the third week of September to
9 Puerto Rico, where I moved.

10 And I expected that I could finish that production on around September 20th,
11 when I expected to be in Puerto Rico. However, I had to wait two more weeks, because
12 of the hurricane.

13 So there's still a small amount of paper documents, probably handwritten notes,
14 other things that might be in addition to the electronic records that I still have to, I guess,
15 scan and then provide to counsel.

16 So that's the only -- that was -- I had fully intended to do that by the end of
17 September, but I -- but I was stuck in New York without the documents, and then there
18 were various other logistical problems in making the move.

19 So I just haven't -- so I just want to be transparent that, you know, I just -- so much
20 has been happening after my move that I haven't completed that, but I certainly will. In
21 the next few days, I'll complete that process and provide to Mr. Kaufmann.

22 So that's the only thing that I know of that wasn't already provided to him by the
23 end of September in electronic form.

24 Q Okay. I appreciate that, and I'll work with Mr. Kaufmann on any follow-up
25 that's necessary.

1 A I suspect they're -- I just suspect they're of a nature, at minimum, work
2 product, but also they're probably privileged to the extent they're not already in
3 electronic form, things that I -- that were -- that I found in my electronic files and
4 provided.

5 So, I mean, I doubt there's much there that would be -- could be turned over
6 without some further review, but certainly I'll provide that all to Mr. Kaufmann.

7 Q Okay. That sounds great. Thank you very much, and I'll follow up with
8 him on that.

9 Now, looking at some of the documents and just helping us understand the
10 various places that responsive documents might be stored, we understand that at the
11 relevant period, which I'll define as roughly the election November 3, 2020, if not slightly
12 before, through January 2021, and we understand that you used an email address that
13 was a combination of [REDACTED] Is that correct?

14 A Yes.

15 Q Did you use any other email accounts other than that one?

16 A I do have other accounts that I think that were revealed through
17 Mr. Kaufmann, but I double-checked and there was nothing in those accounts -- in other
18 words, to the best of my knowledge, everything related to this matter was to or from that
19 particular account.

20 And so, yeah, but I was careful to check all other accounts and make sure there
21 wasn't something that I had accidentally sent from another account.

22 Q Did you ever have an account, an email account to be specific, with the
23 Trump campaign?

24 A No.

25 Q We understand you had a personal phone that ended in [REDACTED] during the

1 period I just mentioned, roughly November through January 2020 through 2021. Is that
2 correct?

3 A Yes.

4 Q Was that your personal phone?

5 A Yes.

6 Q Did you have any other phones that you used during that period?

7 A No.

8 Q Did you use any messaging applications, like Signal, Telegram, WhatsApp or
9 otherwise, on any of your devices to communicate with other people?

10 A IMessage almost exclusively, unless somebody, you know, messaged me on
11 one of the other platforms and for whatever reason.

12 Q And did you have any other platforms installed on your phone?

13 A So What -- WhatsApp, I believe Signal, I believe Telegram. That's the only
14 ones I can think of.

15 Q Did you review those platforms for any documents or messages responsive
16 to the select committee's requests?

17 A I reviewed all the other ones and I found none, although theoretically, there
18 could be Signal communications that disappear. But I guess that's -- that there would be
19 no way I could, you know, retrieve that if that were the case.

20 [REDACTED] And I just note for your awareness that Mrs. Murphy, a member of
21 the select committee, has also joined us.

22 Thank you, Mrs. Murphy, for being here.

23

BY [REDACTED]

24 Q Okay. When and how, Mr. Chesebro, did you begin doing work that could
25 benefit the Trump campaign, either immediately before or after the November 2020

1 election?

2 A I was contacted by a friend in Wisconsin that was involved in litigation
3 around November 9th, and that's when I started doing work to benefit the Trump
4 campaign.

5 Q Who was that friend?

6 A That was -- I think that's been discussed previously -- James Troupis, a
7 former judge in Wisconsin, who I believe was hired as the lead attorney for Trump in
8 Wisconsin.

9 Q And what did he say when he reached out to you?

10 A Well, he just wanted help from an appellate lawyer going forward to make
11 sure that he could adequately staff the case. And so, he asked me if I was willing to do
12 that, and I said I was. And I believe there's been some communication that we turned
13 over that relates to that and gives the specifics.

14 Q Was that request specific to litigation or did it involve other legal issues that
15 Mr. Troupis or others intended to raise on behalf of the campaign?

16 A He was -- he had been -- he was, I think at that time, deciding whether to go
17 forward to help with the recount, the recount of -- you know, the process of recounting
18 the State, and then whatever legal challenge might arise out of that. So that was the
19 exclusive -- that was what he wanted help with. He wanted to make sure that he had
20 adequate staffing to take it on.

21 Q Did Mr. Troupis mention anything to you about States other than Wisconsin
22 in this initial outreach?

23 A It was just focused on Wisconsin.

24 Q After you received that call on or about November 10th, what did you do?

25 A I started helping on his effort to recount Wisconsin.

1 Q What types of things did you do to help?

2 A I think now Mr. Kaufmann probably has an objection.

3 Mr. Kaufmann. Yeah. I think at that point we would invoke attorney-client
4 privilege to the substance of the work that he did for the campaign.

5 [REDACTED] Okay.

6 BY [REDACTED]

7 Q On that point, did you ever have an engagement letter that memorialized an
8 attorney-client relationship with President Trump or the Trump campaign?

9 A There was a confirmatory email I think that was turned over, but no -- no
10 formal engagement letter.

11 Q That email came from Mr. Troupis?

12 A I believe, yeah. It was confirming that I was helping him on the case. I
13 was -- I was doing the whole thing pro bono, without charging, so that apparently he
14 thought it was not necessary to have a formal retention letter, because the client
15 wouldn't have a monetary outlay.

16 Q Were there any other communications, either confirmatory or explaining the
17 scope of the services that you were going to be providing pro bono on behalf of the
18 Trump campaign?

19 A It was -- I think -- I don't recall the specifics. There was just an email
20 exchange between me and Mr. Troupis. Mr. Kaufmann I guess could address that in
21 terms of the documents that he may have forwarded.

22 Q Other than that email that you're discussing here, did you ever, later in time,
23 receive any other type of engagement letter or confirmatory email seeking your
24 assistance to help with legal services for the campaign?

25 A I think Mr. Kaufmann would review the specifics there as being -- being, you

1 know, privileged in some way. I'm not sure I should answer.

2 Yeah, I just feel that that gets into then the specifics of internal communications
3 about representation. So I -- without -- without clarification from a court, I don't think I
4 should go into that.

5 Q Okay. And to be clear, I'm just asking about the scope of your
6 representation and any confirmatory documents that you may have or, if you don't have
7 them, received but recall about the services that you were asked to provide for Mr.
8 Trump or the campaign?

9 A Well, as I say up front, there was just an exchange of an email with
10 Mr. Troupis. I think if you can imagine that, as any kind of legal matter evolves, there
11 can be exchanges of information on what particular lawyers do. But that's something, I
12 think, would then get into the specifics of the representation, so I don't think I could
13 detail, you know, what they might be.

14 Q Okay. And as we go through today, we might be able to explore some of
15 that a little bit more. Who were your primary points of contact with the Trump
16 campaign?

17 A I -- I don't know that that -- I think that gets into the specifics of the
18 representation. So I don't -- I don't feel comfortable getting into that unless
19 Mr. Kaufmann believes it's something I can get into. That is, I think attorney-client
20 privilege, you know, in part, covers, you know, who on the team communicates with each
21 other.

22 Q Just for the record, I'm not asking with this question any communications
23 you may have had about litigation or other legal services. Just asking who was on the
24 team.

25 A Right. So maybe I should speak on the side with Mr. Kaufmann. Is that

1 worthwhile?

2 Mr. Kaufmann. Why don't we meet and have a quick conversation.

3 [REDACTED] Absolutely. Take your time. And I just remind you that hit the
4 mute button to make sure we can't hear you, and it probably makes sense to go off video
5 as well. And we'll go off the record.

6 [Discussion off the record.]

7 [REDACTED] So we're back on the record. It's 1:33 p.m. and we're resuming
8 the deposition here.

9 The Witness. Yeah, that's very helpful. I'm not a trial litigator, so I don't know
10 how all privilege rules operate.

11 So -- but I can -- I can mention the people I spoke with, but -- and maintain the
12 privilege issues apparently, but not -- you know, not the substance.

13 So yes, my main points of contact in addition to being Jim Troupis would be Justin
14 Clark, who I guess is a key lawyer, or was a key lawyer for the Trump campaign. Those
15 would be the two main ones.

16 And then at some point -- I don't know how you say his name -- Boris Epshteyn,
17 also I think a top lawyer, was probably then, at a later point, was one of my key contacts.
18 There are others, but those would be probably the three main ones.

19

BY [REDACTED]

20 Q Okay. What about Mayor Rudy Giuliani, was he a contact for you in the
21 Trump campaign?

22 A My recollection was -- I'm sorry, I just don't know how you say his last
23 name -- Boris Epshteyn was -- was kind of the person that would contact me more
24 than -- I wasn't directly in communication with Mayor Giuliani except on one occasion, I
25 believe. One, or at the most, two times I spoke with him.

1 Q And I think we'll get to some of that.

2 You mentioned Justin Clark with the campaign. Did he ever give you any kind of
3 retainer letter or engagement letter or discuss the scope of your -- the legal services that
4 you might provide to the campaign?

5 A At one point -- yes, he did. At one point, he -- he retained me to do one
6 particular aspect of the case. He authorized me.

7 Q What was that?

8 A I -- Mr. Kaufmann, is that something I can answer?

9 Mr. Kaufmann. No. I think that's -- I think the substance of the work -- I think
10 the substance of the work is privileged --

11 The Witness. Yeah. So --

12 Mr. Kaufmann. -- and confidential.

1

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BY [REDACTED]

3

Q Let me ask this: Was it related to litigation?

4

A Yes. I mean, yes. He -- certainly, I recall at one point that he specifically

5

authorized me to -- to take a step in litigation.

6

Q When was this conversation that you had with Mr. Clark that we've been

7

going around, or alluding to?

8

A Oh, yeah. So that was -- that was the last week or so, around the -- around

9

Christmastime, end of December.

10

Q Any conversation with Mr. Clark before then about representation for the

11

campaign, or legal services you might provide?

12

A There was at least one conversation in November that involved Mr. Troupis

13

and him, and -- and maybe one in December, but I just don't recall.

14

Q When did you begin, to the best of your recollection, communicating with

15

Mr. Epshteyn, Boris Epshteyn?

16

A Probably near the end of the first week of December, as far as I can recall.

17

Q And was it your impression that Mr. Epshteyn was working directly with Mr.

18

Giuliani related to Trump campaign issues?

19

A I know that he had -- I never knew his exact role, but I believe I -- yes, I was

20

under the impression, yes, that he had some connection to Giuliani.

21

Q Did you ever have any meetings with Mr. Giuliani?

22

A No.

23

Q And when I say that, I should also -- I should be specific and say, were you

24

ever at any meetings where Mr. Giuliani was also present?

25

A No, I've never -- never -- I've never met him.

1 Q Did you have any meetings with the President?

2 Mr. Kaufmann. Dan, we're going to -- I think the idea, the concept of the people
3 with whom Mr. Chesebro met, we are going to invoke a Fifth Amendment privilege.

4 [REDACTED] Okay.

5 BY [REDACTED]

6 Q So, Mr. Chesebro, I understand what your lawyer just said. Ultimately,
7 that's your privilege to assert, and so if you would like to respond to any of our questions
8 being clear that you're applying the Fifth Amendment or asserting the Fifth Amendment,
9 we'd appreciate that, but we do need to have that come from you.

10 A Right. Yes, so I -- yeah, just on the advice of my lawyer, Mr. Kaufmann, I'm
11 invoking my Fifth Amendment privilege and respectfully decline to answer anything that
12 is, you know, related to anything besides some of these background questions that you've
13 asked about.

14 Q Okay. And just to be clear, the question -- I'll ask a similar question to what
15 I just asked, but for the record, did you ever have any direct communications with
16 President Trump regarding the election or the January 6th joint session of Congress?

17 A I guess I would take the Fifth Amendment right on that.

18 [REDACTED] I'll stop there and see if anybody in the room has any questions
19 based on what we've just gone over.

20 Ms. Lofgren. Mr. Chesebro, I wanted to clarify that when you answered the
21 question posed about meetings that you are including virtual meetings. That would be
22 phone calls, Zooms, and other virtual presences.

23 The Witness. Oh, I see. No. For example, earlier there was a question about
24 Mayor Giuliani, and I definitely recall one phone conversation with him, maybe two, but
25 that's just the general question.

1 But as questions about what lawyers I communicated with, as I understand it, are
2 not -- that's not privileged. But anything related to the client or the strategy, things like
3 that, you know, I believe there's a privilege and then there also are Fifth Amendment
4 considerations. But I've been very candid about phone calls with -- with Mayor Giuliani
5 or Justin Clark, things like that.

6 Ms. Lofgren. No, I'm not suggesting otherwise. I just wanted to clarify that a
7 meeting would include virtual meetings, phone calls, Zooms, and the like.

8 The Witness. Right. And actually, this is before -- was it before COVID? I
9 guess it -- anyway, so there were no -- I don't recall anything on Zoom, any video. So it
10 would just be phone calls.

11 Ms. Lofgren. Thank you.

12 [REDACTED] Thank you, Ms. Lofgren.

13 BY [REDACTED]

14 Q One of the things I wanted to talk to you about today, Mr. Chesebro, is State
15 legislatures and the campaign's interactions with State legislatures, or State legislators.

16 [REDACTED] And I see, Mr. Aguilar, you just came off camera, so I'll turn the
17 floor over to you.

18 Mr. Aguilar. I'm sorry to interrupt, [REDACTED]

19 Mr. Chesebro, you talked about Signal communications. With respect to the
20 lawyers that you have mentioned, can you tell us what those -- how many of those
21 conversations? Do you have group threads among those lawyers that you mentioned,
22 or are they individual conversations via Signal?

23 I realize that the contents has disappeared, but can you characterize what your
24 Signal threads, you know, were on the lawyer -- with the other lawyers?

25 The Witness. I believe, subject to Mr. Kaufmann's instruction, I can -- I can

1 confirm my recollection of having contacted somebody or been contacted through Signal,
2 but not the substance. That would be -- that would relate to attorney-client privilege,
3 work product.

4 My recollection is on only one occasion, somebody involved with the Trump
5 campaign wanted to switch to Signal, you know, I mean, for whatever reason.
6 And -- but it was one person and it was a day or two. And it was then, at most, one or
7 two short chains about something sensitive, and I don't recall the details. But I don't
8 recall who it was and I don't recall, you know, anything about it, because it would have
9 disappeared.

10 So -- but it was -- it was I would say at least 97, 98 percent of any text
11 communications were on iMessage, and that's been preserved and it has a privilege log.
12 So, you know, I know it's -- you wonder what it was and I just don't recall, but it
13 wasn't -- it wasn't anything significant, in my judgment.

14 Mr. Aguilar. Again, I'm not asking for content. I'm just asking for --

15 The Witness. I just don't recall why the person wanted to switch or what it
16 involved.

17 Mr. Aguilar. Were there any group Signal threads? You can create a group
18 within Signal --

19 The Witness. I think -- I think what I'm recalling is two people, so -- and
20 somebody who switched to Signal. But I just -- I can't recollect exactly what it involved.
21 So it presumably was something the person felt was sensitive, but I -- I don't recall why.

22 Mr. Aguilar. Understood. Thank you, sir. Appreciate it. Thanks, [REDACTED]

23 [REDACTED] Thank you, Mr. Aguilar.

24 BY [REDACTED]

25 Q Mr. Chesebro, who were the people that wanted to go to Signal that you just

1 described?

2 The Witness. Mr. Kaufmann?

3 Mr. Kaufmann. I think that's okay, [REDACTED] Ken.

4 The Witness. I believe -- I believe Mike Roman, who's a nonlawyer, somebody
5 involved in logistics of the campaign, I believe he was -- he was either the person who
6 suggested it or the person who switched. So that's my --

7

BY [REDACTED]

8 Q And you mentioned that there may have been one other person involved in
9 that group thread or thread, however you want to describe it. Who was that other
10 person?

11 A I mean, it's possible I could -- you know, I guess the substance, right.
12 So the -- it's -- my recollection is Boris Epshteyn, that there was some communication
13 involving the two of us. I can't -- I can't be absolutely certain, but I believe at least one
14 of them or probably both were involved in Signal communication that I recall.

15 Q And do you remember roughly when this was?

16 A I believe it was late December or early January.

17 [REDACTED] And, Mr. Aguilar, I see you came back on camera.

18 Mr. Aguilar. One more question: If it's available to you now, sir, realizing that
19 the content has disappeared, if you pull up your Signal app right now, it would show the
20 individuals that you were conversing with. It wouldn't show the content, but it would
21 show the individuals.

22 The Witness. I see.

23 Mr. Kaufmann. Could I talk to Mr. Chesebro for a moment, please, as we're
24 doing this?

25 The Witness. On the side, right.

1 [REDACTED] Absolutely. Take your time.

2 [Discussion off the record.]

3 [REDACTED] Let's go back on. We're resuming the deposition at 1:48 p.m.

4 The Witness. Yes. In answer to your question, I've looked on my phone.

5 There's no record of any participants. So, I mean, I don't have anything I can add.

6 But this was not a significant communication. I was just trying to be complete.

7 I recall there was something, and I just don't recall the subject. And if it had been

8 something really significant, I think I would have remembered the subject.

9 [REDACTED] Thank you, sir, appreciate it.

10 Mr. Aguilar. Thank you, sir, appreciate it.

11 Sorry, [REDACTED]

12 [REDACTED] No, that's quite all right. Thank you, Mr. Aguilar.

13 BY [REDACTED]

14 Q So, Mr. Chesebro, we understand that as early as mid-November of 2020,
15 the Trump campaign's election challenges were proceeding along two tracks: One to
16 challenge the election in court via litigation, the other to ask State legislatures to appoint
17 electors for Mr. Trump despite the election outcome.

18 Are you familiar with both of those tracks that I just described?

19 A As far as what I knew at the time, I think, on advice of my counsel, I have to
20 invoke my Fifth Amendment privilege. That's getting to the substance of various
21 charges.

22 Q And when you began -- I understand that you're invoking the Fifth
23 Amendment, Mr. Chesebro. I'm still going to ask some questions just to see if there's
24 anything that you think you can answer outside of that.

25 So when you began representing Mr. Trump's campaign in November 2020, were

1 you aware of any strategies specifically about State or local officials and seeking their
2 assistance in appointing Trump electors in States that Mr. Trump had lost?

3 The Witness. Mr. Kaufmann, is that something that I can address? I'm just not
4 sure.

5 Mr. Kaufmann. If the query goes to whether he was aware of it from the
6 campaign, then I think it's an attorney-client privilege question.

7 The Witness. Yeah. So my answer is that when I started on this around
8 November 10th, I didn't know any more than anyone would know from the news, and all I
9 knew was my help was requested for litigation in Wisconsin, and I offered to provide it.

10

BY

11 Q Now, outside of public reporting, are you aware of any efforts to encourage
12 State officials not to certify Joe Biden's victory in a specific State?

13 A Anything I would have become aware of would have been related to my
14 representation, and so that would, I think, be covered by attorney-client privilege.

15 Q And I'm not asking specifically about communications for the intent or to
16 receive or obtain information about giving legal advice.

17 Just generally, were you aware of any efforts to encourage State officials not to
18 certify Joe Biden's victory, outside of any privileged communications you may have had?

19 A Yeah. At some point there were reports about it, and I knew about as
20 much as anyone who was following the news would know about it. But I don't -- I don't
21 know -- there's nothing more I can add to that. Obviously, I heard about that at some
22 point in November.

23 Q Let's pull up exhibit No. 2. Can you see exhibit No. 2 that's on the screen
24 there?

25 A Yeah. So it's some sort of article by John Eastman.

1 Q Right. This is a November 5th memo by John Eastman entitled "The
2 constitutional authority of State legislatures to choose electors." And I'll represent to
3 you that this argues that the 2020 election was tainted, both by State election law
4 violations and voter fraud, and that if State legislatures found that the election was too
5 fraught with the risk of fraud to properly be certified, it argues they should exercise their
6 prerogative to legislatively designate a set of electors.

7 I'm happy to scroll through this, but looking at it up on the screen, have you ever
8 seen this memo before?

9 The Witness. Mr. Kaufmann, can I answer?

10 Mr. Kaufmann. You can answer, yes.

11 The Witness. I don't recall -- I don't recall seeing it.

12

BY [REDACTED]

13 Q Did you ever discuss the ideas that I just described, that fraud or vote
14 irregularities, reported or otherwise, in the States as a result of the 2020 election,
15 warranted legislative exercise of -- or, excuse me, warranted State legislatures choosing
16 their own electors, and did you discuss that with Mr. Eastman?

17 Mr. Kaufmann. Objection.

18 The Witness. Yeah, that -- I think that would be covered by -- by -- that's
19 privileged, work product privileged communication with other lawyers representing a
20 client.

21

BY [REDACTED]

22 Q Was it your understanding that John Eastman was representing the
23 campaign at the same time you believe you were representing the campaign?

24 A My understanding is he's a lawyer for the campaign in some capacity.

25 Q Okay. And this memo specifically is dated November 5th. Is it your

1 understanding that around this time, Mr. Eastman was working with the campaign?

2 A I have no idea when he started becoming a lawyer. At some point, I'm
3 assuming by December, but I -- as I say, this -- I don't -- I don't think I've ever seen this
4 memo.

5 Q Rudy Giuliani and others appeared at a number of purported hearings before
6 State legislators in Pennsylvania, Arizona, Georgia, among others. Were you aware of
7 any campaign strategies related to these purported hearings with State legislators in
8 those States?

9 A Anything I was or wasn't aware of I think would bear on strategy with the
10 campaign, and that would be privileged.

11 Q Okay. And I'm not asking if there's a communication or asking you to
12 divulge the substance of communications, just whether you're aware of any strategies
13 that related to having Mr. Giuliani or others appear before State legislators after the
14 election?

15 A Other than --

16 Mr. Kaufmann. I think that that also -- the concept of what Mr. -- sorry, the legal
17 strategy of the campaign would be a privileged matter and confidential.

18 The Witness. Right. I don't think I can answer that other than, like, anyone
19 following the public reports would be aware of, I was aware of various things happening.

20

BY [REDACTED]

21 Q There were a number of phone calls and meetings with State and local
22 officials that President Trump and others with the Trump campaign had, including Mr.
23 Giuliani, and we understand that those were related to the idea of having legislatures
24 designate their own electors, or take other actions related to the election.

25 Were you aware of the fact of any of these calls or meetings with State and local

1 officials?

2 A You're asking if I was aware from a nonpublic source?

3 Q That is correct.

4 A Well, the thing is if -- on any question like this, I'm just trying to be -- just be
5 up front. Any question on this where the answer would be no, I still couldn't answer it
6 because when -- because, you know, just in general, the subject matter of strategies that
7 are nonpublic involving the campaign I can't address because of the privilege issue.

8 Q Okay. And I think just to address the one thing you said, if the answer is
9 no, I don't think that it would invoke any kind of -- or involve any kind of privileged
10 communication. So if the answer is no, we would ask that you say that, regardless of
11 whether or not there's some global strategy, but --

12 A Yeah, but the problem is then -- then -- I'll defer to Mr. Kaufmann on this -- if
13 I start saying yes or -- if I start saying no to things that are no, then it implies the ones I
14 don't answer the answer is different.

15 So I just feel I have to stay away from the subject unless Mr. Kaufmann, you know,
16 reassures me that I'm not waiving the client's privilege. I'm just trying to be careful,
17 because I don't want to answer questions that make me look better if it might
18 waive -- waive the client's privilege.

19 Q Just very quickly, if I may respond, then, Mr. Kaufmann, I'll let you go. The
20 privilege covers communications that you had with somebody you're providing legal
21 advice to with whom you're in an attorney-client relationship.

22 And so, the absence of a communication, I don't think our position would be that
23 that involves any type of recognizable privilege. So I think you would have to disclose
24 that if the answer is truthfully no.

25 [REDACTED] I'm happy, Mr. Kaufmann, if you'd like to weigh in or if you'd like to

1 spend some time speaking with Mr. Chesebro about that.

2 Mr. Kaufmann. I'm thinking through the issues, [REDACTED] as we sit here. And I'm
3 also thinking that, you know, beyond attorney-client privilege, there's the Rule 1.6
4 obligation to maintain confidentiality. And that's broader than merely the privilege.

5 And I can appreciate what Mr. Chesebro just said, which is even where an answer
6 might be good for him, if it's describing the contours of what was or was not his client's
7 legal strategy, I think that Rule 1.6 would prevent him from responding.

8 The Witness. My view on that is also that to the extent that a client is benefited
9 from the view that the client got all sorts of -- all sorts of advice on all sorts of issues, then
10 not seeking advice on something that might be important, you know, that that, you
11 know -- that if he learned the client did seek advice on certain things, that just -- that feels
12 like it's confidential what the client wanted advice on.

13 [REDACTED] I understand that you're asserting privilege there, and this may be
14 something that Mr. Kaufmann and I can chat about in a moment, but if you could bear
15 with us just a moment, I'm going to go on mute very quickly.

16 Mr. Kaufmann. Ken, I'm going to go on mute for a second as well.

17 [Discussion off the record.]

18 [REDACTED] All right. Thank you for your indulgence. Mr. Kaufmann, we're
19 ready whenever you are. And, Mr. Chesebro, we're ready when you are.

20 Mr. Kaufmann. Do you want to go off the record for a moment, [REDACTED] and
21 stay on -- I don't --

22 [REDACTED] Yeah, we can go off the record. That's fine. So let's go off the
23 record.

24 [Discussion off the record.]

25 [REDACTED] Let's go back on the record. It's 2:02. We're resuming the

1 deposition of Mr. Ken Chesebro.

2 When we left off, there was a discussion about your ethical obligations under the
3 rules of professional conduct where, presumably, where you're licensed in reference to
4 Rule 1.6. And I just want to clarify that it's your counsel's position that Rule 1.6 prevents
5 Mr. Chesebro from answering questions and providing information in the face of
6 compelled testimony as a result of Congress' subpoena in this matter.

7 Mr. Kaufmann. Thanks, [REDACTED] So our position is that is correct. Looking at
8 Rule 1.6 -- and I'm looking at the ABA model rule, because, frankly, Mr. Chesebro is
9 admitted in a number of States and there is a question as to which individual State, but
10 they all, with different -- slightly different contours, reflect this: A lawyer shall not
11 reveal information relating to the representation of a client without informed consent.
12 And then one of the exceptions is to comply with other law or a court order.

13 And here, I don't think that compulsion by Congress, it's certainly not an
14 enumerated exception to the general principle of confidentiality. And absent a court -- I
15 don't know what other law is. You might take the position that other law is being
16 subpoenaed by Congress.

17 I would want to see something, a legal holding or ethical opinion to that effect.
18 To my way of looking at it, our position is that it would require a court order to say that
19 the ethical obligation of client confidentiality is overcome merely by being compelled to
20 give testimony in any proceeding.

21 So it's the province of the courts to do that, and I think that's the
22 appropriate -- that's the position we're taking at this point.

23 [REDACTED] Okay. And I appreciate you clarifying your position there. And
24 that, of course, relates to other issues we described at the beginning about the scope of
25 representation, who the client was, when the representation started or ended, et cetera.

1 But we understand that position, and I appreciate you putting on the record. To
2 the extent that there's going to be follow-up, I'll follow up, Mr. Kaufmann, with you later.
3 But I feel --

4 Mr. Kaufmann. Thank you, [REDACTED]
5 [REDACTED] -- at this point, we should go ahead and move beyond that.

6 BY [REDACTED]

7 Q I will ask a very specific question: Were you, Mr. Chesebro, consulted in
8 any way with respect to calls or meetings with State and local officials about the 2020
9 election? And specifically, those calls or meetings would involve people from the Trump
10 campaign or Mr. Trump himself.

11 A Mr. Kaufmann off the record, assured me that's something I could ethically
12 answer. And the answer is no, I had no communications regarding any of that.

13 Q Do you know who was involved in those communications or meetings?

14 A No. I mean, beyond anything that was publicly reported, I have no -- no
15 other information.

16 [REDACTED] I'll pause there to see if any of the subject matter we've just been
17 over, including before our brief recess, if there are any questions about that. Okay.

18 BY [REDACTED]

19 Q So I do want to talk to you about something that's related to this issue of
20 State legislatures choosing their electors, but slightly different, and that is, having groups
21 of individuals meet and cast purported electoral college votes for President Trump in
22 States that President Trump had lost. I'm going to call those, as we go through this,
23 alternate electors.

24 Do you understand kind of the definition I just gave to the alternate electors?

25 A Yes.

1 Q Can you please describe your role in the plan to have individuals meet and
2 cast electoral college votes for President Trump in States that he had lost?

3 A That's --

4 Mr. Kaufmann. [REDACTED] I'm going to interrupt for a moment. I'm sorry, Ken, if I
5 may.

6 The Witness. Yeah.

7 Mr. Kaufmann. We're -- because of the various factors that we set forth in the
8 letter, at this point I would advise Mr. Chesebro to respectfully invoke his Fifth
9 Amendment privilege and decline to answer questions in this area.

10 The Witness. Yes, and I do invoke my Fifth Amendment privilege on that
11 particular area.

12

BY [REDACTED]

13 Q Okay. And, again, I understand that, and we're going to show you some
14 documents and proceed through some of the questions, understanding that you may be
15 invoking as well.

16 So if we could pull up exhibit No. 3. This is a December 11th email from you to
17 Josh Findlay and other members of the RNC or RNC employees, those that involve email
18 addresses ending in GOP.com.

19 And in this email, it explains that Mr. Troupis was the one who floated early on the
20 idea of electors voting on December 14th, and that's in that first paragraph there in the
21 email.

22 My first question to you is, who is Josh Findlay?

23 A I believe he's a lawyer with the campaign.

24 Q Is that someone with whom you interacted in the postelection period, so
25 after November 3, 2020?

1 A I don't recall if I was on any phone call with him, but I interacted in some
2 fashion.

3 Q And would that include emails?

4 A Yes.

5 Q How about text messages?

6 A Possibly he was on group -- group texts, but I don't -- I don't recall. It
7 would be infrequent, if at all.

8 Q And what was his role if the alternate elector effort, as I just defined it a
9 moment ago?

10 A Well, that's where I would have to invoke the attorney-client privilege as far
11 as any specifics, any strategy discussions, and in addition to invoking the Fifth
12 Amendment.

13 Q In this email, you wrote that Mr. Troupis was the one who floated early on
14 the idea of electors voting on December 14th. What do you recall about Mr. Troupis
15 and him, quote, floating this idea?

16 A Well, I would have to invoke the privilege, but also I don't know that I
17 can -- consistent with the attorney-client privilege, I don't know that I can even
18 acknowledge any particular emails that would be attributed to me or to others involved.

19 Q Did you have any kind of attorney-client relationship with employees at the
20 RNC?

21 A That's something that I would have to defer to Mr. Kaufmann on in terms of
22 some sort of joint privilege. I don't have any view on that as -- as -- I just don't have any
23 expertise.

24 ██████████ And, Mr. Kaufmann, I'd just ask you, for purposes of this
25 conversation and this email specifically, are you asserting attorney-client communications

1 privilege with respect to this email that includes employees with the RNC?

2 Mr. Kaufmann. We are. Thank you, [REDACTED]

3 [REDACTED] If we could pull up exhibit No. 4.

4 BY [REDACTED]

5 Q Can you see exhibit No. 4 up on the screen, Mr. Chesebro?

6 A Yes, I can.

7 Q This is a memorandum dated November 18, 2020, to Mr. Troupis from you,
8 Kenneth Chesebro. And on page 1, you wrote to Mr. Troupis, quote: "You asked for a
9 written summary of the legal analysis underlying my suggestion during our conference
10 call."

11 So can you please tell us about the discussion on the conference call in which you
12 and Mr. Troupis discussed an alternate elector strategy?

13 A Well, of course, in addition to the Fifth Amendment privilege, I would note
14 the privilege issue that I think -- you know, I don't want to be pedantic, but I don't think I
15 can even acknowledge there were documents that have not been held by any court to be
16 nonprivileged or confidential, I don't think I can even acknowledge having had a role in
17 either sending or receiving them, just to make sure that I maintain the privilege for my
18 client.

19 Q So just to be clear, you're asserting the Fifth Amendment privilege and an
20 attorney-client privilege, communications privilege to that question about this memo?

21 A Yes, indeed.

22 Q You've mentioned a call here, specifically a conference call. Approximately
23 on what date, if you can recall, did that call take place?

24 A Of course, I'd have to invoke the privilege on that.

25 Q What privilege, Mr. Chesebro?

1 A Well, the -- the -- I would invoke -- I guess the Fifth Amendment privilege
2 about this entire subject would cover it and, therefore, nothing else would be relevant.

3 Q On page 1 of this memo, you wrote that these alternate electoral votes
4 should be considered timely so long as the President received a court decision, or perhaps
5 a State legislative determination rendered after December 14th.

6 Without getting into any privileged communications, was it your assessment that
7 a competing slate of electoral votes could only be counted by Congress with the approval
8 of court or State legislature in this memo?

9 Mr. Kaufmann. If I may, we're going to invoke multiple objections to questions
10 relating to this document. And I'll, of course, let Mr. Chesebro adopt this on the record,
11 but the position would be that there -- we would invoke his Fifth Amendment privilege,
12 we would invoke attorney-client privilege, and we would also invoke Rule 1.6 on this line
13 of questioning. Thank you.

14 The Witness. And I would affirm that as my position on this kind of memo
15 attributed to me and anything similar.

16

BY [REDACTED]

17 Q And that's perfectly fine. And if you'd like to make it easier on yourself and
18 just adopt an objection or just say Fifth or whatever it might be to the questions, that's
19 perfectly fine. We're still going to go through the questions here.

20 And so what happened, to the best of your knowledge, after you sent this
21 memorandum to Mr. Troupis?

22 A Again, Fifth and privilege and Rule 1.6.

23 Q And when you say "privilege," you're saying attorney-client communications
24 privilege?

25 A Yes, indeed, yes, including work product, the -- working on the, you know,

1 litigation on the case.

2 Q Okay. And just for clarity on the record, our position would be on at least
3 one aspect of the work product is that it has to be in anticipation of litigation, and that
4 anticipation merely of the joint session of Congress is not sufficient. I believe a judge in
5 California has explained that already.

6 So, to the extent that applies or you invoke that, we would just note our position
7 there as well.

8 If we could pull up exhibit No. 5, please. This is an email dated December 6th at
9 1:50 -- excuse me. I'm looking at the middle one that's 1:54 p.m., but there are other
10 dates as well. And it's an email involving William Bock, Justin Clark, Matt Morgan, Jenna
11 Ellis, and they're attaching your November 8th memo and writing, quote: "Are steps
12 being undertaken to ensure that Republican electors in Arizona, Georgia, Michigan,
13 Nevada, Pennsylvania and Wisconsin cast their votes and transmit them as required on
14 December 14th?"

15 Mr. Kaufmann. [REDACTED] is Mr. Chesebro a party to this email? I can't see the top.
16 He's certainly not on the 1:54 email. I don't --

17 [REDACTED] No, he is not. And I'm just going to ask a few questions about this.
18 The email also says: "I expect this has likely already been addressed and the strategy
19 determined, but I did not want to be negligent in failing to pass on Ken's memo." And it
20 references you, Mr. Chesebro, elsewhere in the email.

21 Later, I'll represent to you and as seen up here, John Eastman forwarded the email
22 to somebody named Michael Farris, Jay Sekulow, Kurt Olsen, Larry Joseph and Mark
23 Martin, and wrote: "This is huge and hugely important. Let's make sure the various
24 State electors are aware of the absolute necessity of meeting on the 14th, casting their
25 votes, and otherwise complying with the transmittal requirements of Federal law."

1 So my first question is, do you know how your memo ended up getting to
2 Mr. William Bock?

3 A No.

4 Q And did you ever discuss that memo, the November 18th memo, with any of
5 the folks listed there, John Eastman, Jay Sekulow, Kurt Olsen, Mark Martin, or others?

6 Mr. Kaufmann. Objection.

7 A Yeah, I think the -- I would -- I would invoke the Fifth on that as well.

8 Mr. Kaufmann. And attorney-client privilege.

9 The Witness. And attorney-client privilege regarding any attorney for the Trump
10 campaign.

11 BY [REDACTED]

12 Q Your phone records reflect three calls with Mr. Bock's law firm on December
13 3rd, one on December 4th, and another on December 7th, which is around the time of
14 these emails.

15 Were those calls, in any way, related to the proposal that you laid out or described
16 in the November 18th memorandum?

17 A I don't recollect, but I was working with him on litigation about Wisconsin.
18 So I'm inclined to think that was related to what we were doing in Wisconsin.

19 Q And the "him" in that statement, that answer that you just gave, you were
20 working with him, that was with Mr. William Bock?

21 A Yes, Mr. Bock.

22 Q Now, your original memo, the one we just looked at focused on Wisconsin.
23 In this email, though, Mr. Bock references the possibility of electors meeting in six States
24 that I read off earlier. What was the rationale for expanding the plan beyond
25 Wisconsin?

1 A I would have to invoke not just the Fifth Amendment, but also
2 attorney-client privilege and Rule 1.6 as to the substance of any strategy.

3 Q And what was John Eastman's involvement in coordinating efforts to
4 convene electors? He was somebody listed on the email we just looked at.

5 A I, again, invoke the attorney-client privilege relating to -- apparently, he was
6 an attorney for the Trump campaign.

7 Q If we can pull up exhibit No. 6. This is an email dated December 7th from
8 John Eastman to Rudy Giuliani, whose email address is the one you see there,
9 [REDACTED] in the "to" line. That email attached your November 18th memo and
10 wrote: "Here's the memo we discussed."

11 Do you know how Dr. Eastman ended up circulating your email to Mr. Giuliani?

12 A No.

13 Q In the email, Mr. Eastman referenced the discussion that he had with Mr.
14 Giuliani about the memo, or at least he said: "Here's the memo we discussed."

15 Did you ever get a readout of a call or communication that Mr. Eastman had with
16 Rudy Giuliani about your November 18th memorandum?

17 A I don't think I can answer that, because of the attorney-client privilege.

1

2 [2:20 p.m.]

3

BY [REDACTED]

4

Q Did you ever discuss this November 18th memo with Rudy Giuliani?

5

A I think that would be covered by attorney-client privilege, and also this

6

entire subject matter is covered by my Fifth Amendment privilege.

7

Q We understand from phone records that you had a call with Mr. Giuliani on

8

December 10th for about 14 minutes, at 8:54 at night, and then on December 11th for

9

about 3 minutes. Were either of those calls related to the alternate electors strategy as

10

laid out in your November 18th memo or any later memos on this topic?

11

A I have to invoke the Fifth Amendment and attorney-client privilege as to

12

those calls.

13

Q Did you discuss your memo, that one we just looked at, November 18th,

14

with anyone on the campaign team including Justin Clark or Matt Morgan?

15

A I would have to invoke attorney-client privilege on it -- on that as well.

16

Q Okay. If we could pull up exhibit No. 7. As that's coming up, I'll represent

17

to you that on December 8th The New York Times published an excerpt of an email from

18

Jack Wilenchik to Boris Epshteyn, Christina Bobb, Dennis Wilenchik, and others regarding

19

your proposal.

20

First thing I'll ask is, what was Christina Bobb -- or who -- do you know who

21

Christina Bobb is?

22

A I believe she was an attorney in some capacity for the Trump campaign.

23

Q Did you interact with her directly at all?

24

A There -- I -- my recollection is there may be an email or two that she might

25

have been on, but I don't believe I personally interacted with her.

1 Q And just to clarify, so do you remember any phone conversations or text
2 communications that you may have had with Ms. Bobb?

3 A No, I don't recall any phone conversation or text communication directed to
4 her or from her to me, but there might've been some communication where she was on
5 an email chain.

6 Q Did you ever have any meetings, including virtual meetings, where Ms. Bobb
7 was also attending?

8 A No.

9 Q Did you ever speak to Ms. Bobb about your proposal to have alternate
10 electors meet in States that Mr. Trump had lost?

11 A No, I never spoke to her at all.

12 Q Who's Jack Wilenchik?

13 A He's an attorney in Arizona who, I believe, represented the Trump campaign.

14 Q Did you ever have any communications with him, either email, text, phone
15 call, or in person?

16 A At least one, maybe two phone calls, and some email communications.

17 Q When did those phone calls occur?

18 A I believe the second week of December.

19 Q Were they related to the plan to have electors meet and cast votes for
20 Trump in States that he had lost?

21 A I can't get into the substance of the communication. That would be
22 covered by attorney-client privilege, as I believe he was a Trump attorney.

23 Q And do you believe he's a Trump attorney working on these issues?
24 Because I -- my understanding is that he did work on litigation in Arizona and represented
25 a number of folks out there with the --

1 A Right, yeah, he was focused on Arizona, yeah. So he was not a Trump
2 campaign staffer. He was an outside attorney that had been retained by the Trump
3 campaign. So anything of substance that I communicated with him I think would be
4 covered by attorney-client privilege. And then, of course, this entire subject, I'm taking
5 the Fifth Amendment privilege on.

6 Q Do you know if he was involved at all in coordinating alternate electors in
7 Arizona or others -- other States? Excuse me.

8 A I believe that would be covered by privilege in terms of his role.

9 Q What kind of privilege? Just to be clear for the record.

10 A Just that -- that whatever decisions the Trump campaign made to have him
11 be involved in any particular area, that would be, you know, relate to strategy or just be
12 something that I think --

13 Mr. Kaufmann. He just wants you to clarify between attorney client or Fifth
14 Amendment.

15 The Witness. Yeah, attorney-client and 1.6, yes.

16 BY [REDACTED]

17 Q Okay. So if we can go to page six of this exhibit. This includes a published
18 version of an email that Mr. Wilenchik sent to Mr. Epshteyn and others, and it
19 references -- the reason we're bringing this up -- a call with you. Said, quote, "I just
20 talked to the gentleman who did that memo, Ken Chesebro." And that's in the "PS" line
21 at the bottom of that published email.

22 Can you please tell us what you discussed with Mr. Wilenchik about the memo
23 that Jack Wilenchik is referencing?

24 A As far as any discussions with him, though, I would invoke the Fifth
25 Amendment privilege. I would also invoke attorney-client and rule 1.6 privilege.

1 Q In the email, Mr. Wilenchik wrote that your proposal, quote, is basically the
2 all of us -- and then in parentheses -- oh, I'm sorry. If you go to the next page. Yes,
3 there it is. I'm sorry. On that same line in the PS. Let me start over.

4 So he wrote there -- if you're following along, it's in the bottom
5 paragraph -- wrote, quote, the proposal is, quote, basically that all of us, GA, WI, AZ, PA,
6 et cetera, have our electors send in their votes even though the votes aren't legal under
7 Federal law because they're not signed by the governor.

8 Is that what you discussed with Mr. Wilenchik in the call he referenced?

9 A I'm not at liberty to discuss what he and I discussed in terms of strategy on
10 the campaign, nor to, you know -- nor to address whether his email accurately
11 summarizes anything we discussed. Given the attorney-client privilege, I can't get into
12 it; and also, I'm taking the Fifth Amendment privilege as well.

13 Q Mr. Wilenchik also wrote in that that Members of Congress could potentially
14 argue that they're not bound by Federal law because they're Congress and make the law,
15 et cetera. Was this a reference to any analysis that you had done related to the
16 Electoral Count Act?

17 A I don't know why -- I don't know what that's with reference to.

18 Q Okay.

19 A I mean, I was not copied on the email. So, I mean, all I -- all I know is what
20 was published in The New York Times, apparently this leaked email.

21 Q Mr. Wilenchik also wrote, quote, we would just be sending in fake electoral
22 votes to Pence so that someone in Congress can make an objection when they start
23 counting votes and start arguing that the fake votes should be counted.

24 So my question is, are you aware of a switch at any point in time from
25 these -- these purported electoral college votes in States that Mr. Trump had lost

1 requiring a court or legislative determination that they are, in fact, valid and that
2 Mr. Trump had won in that State, and the switch from that to the switch that Congress
3 alone could decide whether to count those votes?

4 A I can't get into any knowledge I might have of what the campaign thought or
5 when on whatever -- any particular strategy. So I have to invoke the attorney-client
6 privilege and rule 1.6 on that.

7 Q Another person identified in this story is Arizona GOP chair Kelli Ward. Did
8 you ever have any communications with Kelli Ward in the post-election period?

9 A I believe there were emails that are in the privileged log or maybe even
10 turned over where she's recipient or maybe a Senator, so I recall the name.

11 Q Okay. And tell us about the communications that you had with her as best
12 as you can recall.

13 A I have to invoke the Fifth Amendment privilege on that and so that I don't
14 waive that as to this entire subject matter. But I do believe that there are emails that
15 have been turned over that would -- that would give you that answer better than I can
16 recall presently.

17 Q Approximately when datewise was it decided to move forward with the
18 strategy to have people meet and cast electoral college votes for Mr. Trump in States that
19 he had lost?

20 A Again, that would be, I believe, internal campaign discussions that I wouldn't
21 be at liberty to disclose based on the attorney-client privilege and rule 1.6, but also it's
22 covered by my Fifth Amendment privilege.

23 Q How did you learn that the campaign would be moving forward with this
24 strategy?

25 A That would -- that'd be privileged in terms of attorney-client privilege and

1 rule 1.6.

2 Q At some point earlier, you mentioned Mr. Mike Roman. I understand he
3 had a role in coordinating electors meetings in various States and certain aspects of the
4 plan to have people meet and cast purported electoral college votes for Mr. Trump.
5 Was he involved in that effort to your -- the best of your knowledge?

6 A Testifying -- testify -- testifying before you or being interviewed before you, I
7 would have to -- I would have to invoke the privilege in terms of the campaign strategy
8 and also the Fifth Amendment. But I do believe there are documents produced that
9 would -- would answer the committee's interest in Mr. Roman and his role.

10 Q Who else was responsible that you're aware of for coordinating electors
11 meetings in the various contested States that we've gone over here?

12 A Again, from memory, I don't think I'd be at liberty to disclose that, but I
13 believe documents have been turned over that will give extensive detail on the
14 involvement of various people connected to the campaign.

15 Q And just for clarity in the record, you're unable to disclose for what purpose?

16 A It just feels -- it feels for me to -- to reflect on my memory of who I was in
17 touch with would be me disclosing from my own mind confidences of the campaign.
18 However, for the committee to have properly subpoenaed documents, which apparently
19 have been determined not to be privileged, and so they're produced, for you to be able to
20 read through all the documents that Mr. Kaufmann, I believe, has forwarded, is not me
21 disclosing something that's confidential of my own initiative, but it's simply the
22 committee getting access to documents that happen to exist which happen not to be
23 privileged.

24 And what I'm saying is those documents have much more detail than anything
25 that I recall now. So it's -- conveniently, the committee can get the information it seeks

1 in more detail than I could give now, but it's different for me to disclose it sitting before
2 you.

3 Q And that's fine. And just to drill down on the basis for the objection, is
4 it -- or privilege assertion, is it -- are you asserting the Fifth Amendment as well as
5 attorney-client privilege?

6 A The entire subject. And so, in theory, one -- my attorney could have said to
7 produce the documents would be something that would be protected by the Fifth
8 Amendment, but as he explained in the start, in an effort to be as helpful as possible, the
9 documents are being produced without any constraint of the Fifth Amendment. But I
10 would maintain the Fifth Amendment as to my own personal testimony.

11 Q Okay. Thank you. I appreciate that -- having that clarity in the record to
12 the questions.

13 If we could pull up exhibit No. 8, please.

14 All right. So this is a December 10th, 2020, email from you, Mr. Chesebro, to
15 Kathy Berden. If we go down just a bit. There we are, at the bottom of page one.
16 And you say that several people with the Trump campaign, including Justin Clark and Nick
17 Trainer, gave me your contact information and asked me to help coordinate with the
18 other five contested States.

19 So, first of all, who is Nick Trainer?

20 A I don't -- I don't recall who Nick Trainer is presently, but what I'm saying is
21 that all these documents that have been turned over, you know, they -- I mean, they
22 speak for themselves. I don't know that I can add anything, nor would I feel free to,
23 given the attorney-client privilege and given the Fifth Amendment privilege I'm asserting.

24 Q With those assertions -- yeah, go ahead. I'm sorry.

25 Mr. Kaufmann. Sorry. Were these -- were these among the documents that we

1 disclosed to you, [REDACTED]

2 [REDACTED] This is a separate production that the select committee has
3 received.

4 Mr. Kaufmann. Okay. All right. I have nothing to add.

5 BY [REDACTED]

6 Q This is you reaching out to people in Michigan or a person in Michigan at
7 least. Did you do this for electors in other contested States, including Arizona,
8 Pennsylvania, Georgia, or others?

9 A So my answer, again, would be I'm invoking the Fifth Amendment privilege,
10 and I'm also invoking the attorney-client and rule 1.6 privileges in terms of my testimony
11 before the committee today. However, I think Mr. Kaufmann can confirm that there's a
12 very large number of documents relating to the number of States that I believe were
13 probably more comprehensive than anything you currently have, and that will answer
14 your questions about what may or may not have happened in various States involving me.
15 So I think -- I think there's really no need to go into the detail about particular States
16 because you'll have quite a bit of material to go through.

17 Q In this email you say, I'm preparing drafts of the documents that the electors
18 in Michigan could sign to effect their votes in case that would be helpful as a start.

19 Did you work with anybody to prepare the documents that the electors in States
20 that Trump had lost used to cast purported electoral college votes?

21 A Again, I don't feel I can answer that without waiving my Fifth Amendment
22 right, which I'm maintaining, and also the attorney-client privilege issues. So it's one
23 thing for me to ensure that Mr. Kaufmann could turn over all these documents and not
24 assert any act of production privilege under the Fifth Amendment, but it's just another for
25 me to then be asked questions about details that happen to be in the documents that the

1 committee could read. So we have to draw a bright line there to -- you know, to ensure
2 that I'm not waiving any privilege that I have.

3 Q That's perfectly fine. And if you just want to assert those -- the privileges,
4 that's perfectly fine and we can move on. I just need to do it for clarity in the record to
5 know when something would fall under your Fifth Amendment privilege or a different
6 kind of privilege that I may be able to work through with Mr. Kaufmann or elsewhere.

7 A Great. Thank you.

8 Q So sometime before December 9th, it appears that you received a request to
9 prepare additional memoranda on the alternate electors strategy. And namely, we've
10 received copies of a December 9th memo and a streamlined version of your memo from
11 November. So the question is, who asked you to prepare any additional memoranda, if
12 anyone?

13 A I would have to invoke the Fifth Amendment privilege on that and also
14 attorney-client and rule 1.6 privilege.

15 Q Bear with me just one moment, Mr. Chesebro. Thank you.

16 [Discussion off the record.]

17 Mr. Kaufmann. Ken, if you need a break, let us know, okay.

18 [REDACTED] All right. Thank you for your indulgence here. Yeah, and if at
19 any point you need a break, just please do let us know, as Mr. Kaufmann just mentioned.

20 BY [REDACTED]

21 Q We can pull up exhibit No. 9, please.

22 All right. Can you see exhibit No. 9 on the screen there, Mr. Chesebro?

23 A Yes, I can.

24 Q So this is a memo, again, identifies as coming from you to Mr. James Troupis,
25 dated December 9th, 2020. And this memo, I'll represent for the record and for you,

1 summarizes the purpose of the alternate elector plan, which is to, quote, validly cast and
2 transmit votes so that the votes might be eligible to be counted if later recognized, and in
3 parentheses, by a court, the State legislature, or Congress, as the valid ones that actually
4 count in the Presidential election.

5 And then the memo goes on to evaluate certain State laws governing electoral
6 certification and electoral college meeting, concluding that the alternate slates would be,
7 quote, unproblematic in Arizona and Wisconsin, slightly problematic in Michigan,
8 somewhat dicey in Georgia and Pennsylvania, and very problematic in Nevada. And, of
9 course, that is not the entirety of the memo but certain portions from it.

10 So unlike the November memo that we looked at earlier, this adds upfront the
11 possibility that Congress alone could determine on January 6th that the purported
12 electoral college votes for Trump in contested States could be counted. Why that
13 addition upfront in this memo?

14 A I think I'd have to invoke the Fifth Amendment privilege and also
15 attorney-client privilege in terms of the work product involved and strategy, that sort of
16 thing.

17 Q Okay. And some witnesses who have testified to us have described a shift
18 in analysis during that period, the late November, early December period, where the
19 object of the strategy was to submit the electoral votes to Congress not just cast them as
20 a contingency for a court or even a State legislature. Is that consistent with your
21 recollection of events in that period, so November and December of 2020?

22 A If I recollected anything on the matter in that level of detail, I wouldn't be
23 free to disclose it given the attorney-client privilege.

24 Q This memo, as I mentioned earlier, addressed State law provisions regarding
25 electoral college electors and how or when they meet to cast electoral college votes.

1 Who, if anyone, asked you to analyze the various State laws governing those types
2 of meetings?

3 A If I -- if I -- even if I could recall now, I wouldn't be free to disclose the
4 internal communications within the campaign.

5 Q And just for the record, based on what privileges are you asserting?

6 A Attorney-client privilege and rule 1.6.

7 Q Did you say attorney-client and rule 1.6?

8 A Yes.

9 Mr. Kaufmann. I would also advise Fifth Amendment.

10 The Witness. Yeah, and the Fifth Amendment, the entire subject matter. I
11 mean, I don't want to belabor it, but, yeah, I'm very limited in what I can do, other than,
12 you know, urge you to look at the documents that have been produced, which
13 are -- which are free from the Fifth Amendment constraint.

14 One thing I will mention about that memo is the version produced from my files,
15 the digital version, has hyperlinks that I believe there's maybe a version that doesn't have
16 active hyperlinks because it was scanned. So that may be helpful to you in terms of
17 understanding the document.

18

BY [REDACTED]

19 Q I appreciate that. And were those hyperlinks in the original that were sent
20 to the campaign?

21 A Yes. I mean, that's -- and that's why that version -- the version of my files
22 would be a superior -- more authentic version, I believe.

23 Q In that memo, it analyzes various laws, like I just mentioned, in Pennsylvania,
24 Wisconsin, Michigan, Georgia, Arizona, Nevada, and New Mexico. I don't think all of
25 those were analyzed specifically. But how did the campaign choose to execute this plan

1 in those States?

2 A Yeah, that would be a matter that would be covered by attorney-client
3 privilege and rule 1.6.

4 Q I went over earlier some of the conclusions that it would be slightly
5 problematic, somewhat dicey, or very problematic -- to use the words in the memo -- in
6 various States. Did anyone express concerns that executing this alternate elector
7 scheme would violate State or Federal law?

8 A Unfortunately, I'm unable to answer that under rule 1.6 and the
9 attorney-client privilege.

10 Q Are you asserting the Fifth Amendment as well?

11 A Yes, to the entire subject matter. Thank you for clarifying.

12 Q In Georgia and Pennsylvania, one of the issues identified in this memo was
13 that governors -- excuse me, governors would need to ratify alternative candidates to be
14 electors. To your knowledge, did anyone consider in contacting Governor Kemp in
15 Georgia or Governor Wolf in Pennsylvania to see if they would ratify any necessary
16 alternate electoral college votes?

17 A Again, I'd have to decline to answer based on the Fifth Amendment and
18 attorney-client privilege.

19 Q And similarly, in Nevada, the memo recognized that the secretary of state
20 has to be president -- excuse me, present for the meetings of electors. Do you know if
21 anyone ever considered reaching out to secretary of state in Nevada to seek her
22 participation?

23 A Same answer, the Fifth Amendment and attorney-client privilege.

24 Q At this point, I think it might be a good time to take a quick break, maybe
25 5 minutes, if that's okay with you, and then we'll enter, I think, probably the second half

1 of the deposition.

2 The Witness. Okay.

3 Mr. Kaufmann. Great.

4 [REDACTED] All right. Let's go off the record, and we'll see you back in
5 5 minutes.

6 [Recess.]

7 [REDACTED] Let's go back on the record. It's 2:48 p.m., and we're resuming the
8 deposition of Mr. Kenneth Chesebro.

9 At this point, I'm going to turn it over to my colleague, [REDACTED]

10 [REDACTED] Okay. Thanks, [REDACTED]

11 BY [REDACTED]

12 Q And good afternoon, Mr. Chesebro. I had a few questions to follow up on
13 [REDACTED] line of questioning related to this electors issue. First among them is this:

14 The select committee has received testimony that in mid-December 2020, RNC
15 Chairwoman Ronna McDaniel received a phone call from President Trump and Dr. John
16 Eastman in which they discussed an approach to the electors strategy and requested
17 Ms. McDaniel's assistance in facilitating that strategy. Do you have any knowledge
18 outside of public reporting about that phone call that President Trump and Dr. Eastman
19 had with Ronna McDaniel?

20 A So this is a situation as we discussed earlier where I -- that even in situations
21 where maybe I don't have knowledge, I can't get into whether or not I did because then it
22 would then imply that where I don't answer similarly, then -- I mean -- so my answer was I
23 can't get into anything I may have known privately at some point related to any strategy
24 the campaign has, even if it was early when I may not have known as much as I learned
25 later.

1 So I can't really answer what I knew at that time because it would -- I don't want
2 to waive -- do anything that would waive my client's privilege as to -- or give any hint as to
3 whether I knew other things where I'm not answering. So my -- a blanket declining to
4 answer based on the attorney-client privilege and rule 1.6 is the safest way I know to
5 avoid waiving any of my client's privilege, even -- even on issues where it would help me
6 personally not to have -- you know, to be able to say I had no particular involvement in
7 something. So I think I just feel I have to be careful not to waive my client's privilege.

8 Q Thank you for delineating that position, Mr. Chesebro. And I believe that
9 ██████████ has made the select committee's position on this point already on the record,
10 but I'll just reiterate that it's our position that the lack of existence of an attorney-client
11 privilege communication is a question that you can answer.

12 Another thing that I just wanted to note for the record based on what I heard
13 from your answer, my question is whether you have any knowledge presently about that
14 phone call that President Trump and Dr. Eastman had with Ms. McDaniel, not specifically
15 whether you had any knowledge of that phone call at the time?

16 A Right. But were you saying -- I mean, I sort of -- I don't want to be
17 pedantic, but from a non-public source? Because at some point I heard that there was
18 something in mid-November, you know, from a public source, but that wouldn't be
19 helpful to you.

20 Q Correct. I'm only asking whether you have any knowledge about that
21 phone call other than through public reporting.

22 A Right. And so my -- just to be safe, I have to say that anything I might have
23 learned from non-public source I feel would be internal campaign communications that I
24 wouldn't be free to divulge, unless it was something in a document which had been
25 turned over as nonprivileged.

1 Mr. Kaufmann. I just -- if I can, I just want to augment that with my prior point
2 about legal strategy and rule 1.6 applying to make it very difficult for an attorney to
3 answer about what was or was not communicated to him. Even if the lack of a
4 notification is not privileged, there's still a rule 1.6 concern about discussing whether or
5 not things were raised with counsel. And so I think that's part of what Mr. Chesebro is
6 invoking here.

7 The Witness. Yeah, I'm just trying to be careful. I'm not an expert here, but my
8 sense is if a court were to order me to answer no to every subject where I had nothing to
9 do with it, then I would feel that that's something I could do because then there wouldn't
10 be the 1.6 issue. But absent that, I just feel 1.6 is so unclear that I just have to be sure
11 that I'm not -- I'm not waiving something that the client has a right to require me to
12 maintain.

13

BY [REDACTED]

14 Q Understood, both Mr. Kaufmann and Mr. Chesebro. And on the 1.6 rule
15 specifically, [REDACTED] has already identified what I think our position on that question
16 is. You know, I think it's reflected in the record, and hopefully we don't have to sort of
17 relitigate it each time that it arises. So, with that, I'll move on.

18 Other than the phone call that President Trump and Dr. Eastman had with
19 Ms. McDaniel, are you aware of any actions that President Trump took directly to
20 facilitate the strategy to have electors meet and cast votes in the States that he lost?
21 And, again, this question is outside of any public reporting.

22 A Right. So anything I would know of what President Trump personally or
23 any of his campaign staff would've done to facilitate the alternate electors voting, I
24 wouldn't be free to disclose it because it'd be clearly privileged and confidential. And
25 plus, rule 1.6 would cover it. But also, I believe my Fifth Amendment privilege covers

1 this entire subject matter in terms of any involvement with the alternate electors.

2 Q The five major contested States in the electoral college in the 2020 election
3 were Pennsylvania, Wisconsin, Michigan, Georgia, and Arizona. Together, those five
4 States comprise 73 electoral votes, and yet subtracting those 73 electoral votes from Joe
5 Biden's 306-vote margin would yield 233 electoral votes, which would still be one vote
6 more than the 232 votes that President Trump ultimately received in the electoral
7 college.

8 Were Nevada and New Mexico chosen as vehicles to cast alternate electoral votes
9 specifically because more electoral votes were needed to put President Biden's vote
10 count beneath President Trump's?

11 A If I had any information about why the Trump campaign picked particular
12 States to have alternate electors vote, I wouldn't be free to disclose that because it would
13 be nonpublic and therefore privileged under attorney-client and 1.6, but also the subject
14 matter is something that I'm taking the Fifth on.

15 Q Okay. In your view, what was the significance of the Texas v. Pennsylvania
16 litigation as it pertained to the alternate electors strategy?

17 A If I had a view on that either at the time or now, I think that would
18 be -- that's something that I couldn't disclose given the campaign's attorney-client
19 privilege and 1.6 confidentiality rights, but also it's covered by the Fifth Amendment
20 privilege that I'm pleading.

21 Q What about the pendency of other Federal or State litigation that -- that was
22 pending at the time -- or not pending at the time that electors met on December 14th,
23 how did that affect the legal analysis surrounding the strategy if at all?

24 A Again, attorney-client, rule 1.6, Fifth Amendment.

25 Mr. Kaufmann. That's a very sort of broad question too. It's hard to -- it would

1 be hard to answer that question, I think.

2 [REDACTED] Okay. And I can certainly rephrase it, although I suspect that
3 the answer will be the same.

4 Mr. Kaufmann. It will, so --

5 [REDACTED] I think we can move on.

6

BY [REDACTED]

7 Q So, Mr. Chesebro, we understand that the campaign's legal personnel,
8 namely Justin Clark, Matt Morgan, and Josh Findlay, removed themselves from the work
9 surrounding alternate electors following the Supreme Court's refusal to hear the Texas v.
10 Pennsylvania litigation. Did any of those three people express any concerns about
11 continuing with the alternate elector plan to you during that time?

12 A I wouldn't be free to disclose any communications they had with me related
13 to the alternate elector plan, unless until a court were to hold that, you know, if they
14 testify on the subject, then perhaps there was some sort of waiver, at least a limited
15 waiver of attorney-client privilege or rule 1.6 privilege. But unless and until a court
16 determined that there -- that is a subject that I could address, I wouldn't be free to do
17 that. And also, there's the Fifth Amendment issue that I'm also invoking.

18 Q All right. We understand that around this time, those three individuals
19 handed off responsibilities for the coordination of this strategy to you. Is that correct?

20 A That's a subject where I might personally want to address it, but I'm
21 constrained by the fact that my client has told me to assert all possibly available
22 attorney-client privilege and rule 1.6 issues, unless and until the client waives it or a court
23 determines otherwise, and so I'm just simply not at liberty to address that subject matter.

24 Q When did that handoff of responsibilities take place?

25 A I'm not at liberty to even address whether there was any handoff of

1 responsibilities. That would involve internal campaign communications among lawyers
2 and would -- I'd have to have -- I'd have to be cleared I think by a court to be able to
3 address that -- that subject, and then, of course, I'm also asserting the Fifth Amendment
4 privilege.

5 Q Did you have any discussions with Mayor Giuliani or anyone else on the
6 Trump campaign legal team about continuing the strategy related to alternate electors
7 after Mr. Clark, Morgan, and Findlay transferred responsibilities to you?

8 Mr. Kaufmann. Objection to the form of the question -- that's okay. Go ahead.
9 Withdrawn.

10 The Witness. Yeah. I don't think I can -- you know, I can certainly testify -- or I
11 can certainly comment on whether I communicated with particular individuals at a
12 certain date and time, but I'm not allowed to address what I communicated with him
13 about, and so I don't think I can answer that question.

14 Mr. Kaufmann. And I would just note for the record that we may not agree with
15 the contention that such responsibility was transferred. That assumes something that
16 we may not agree with.

17 The Witness. Yeah, that's why I tried to indicate that -- in my earlier answer --

18 Mr. Kaufmann. You did.

19 The Witness. -- I'm not free to address whether, in fact, that was true.

20

BY [REDACTED]

21 Q Did you communicate with Rudy Giuliani about alternate electors after at
22 any point when Mr. Clark, Mr. Morgan, or Mr. Findlay may have or may not have
23 removed themselves from responsibilities relating to the strategy?

24 A Again, so I don't -- I don't personally have a recollection about any details
25 about when I spoke with Mr. Giuliani, but I believe [REDACTED] mentioned some

1 communication with Mr. Giuliani at a timeframe, second week of December, and so it
2 may be before or after whatever period of time you're discussing.

3 So you might have some -- I mean, whatever the record is as to when I
4 communicated with him, the record is. But I can't discuss any -- anything of substance I
5 might've -- might have talked with him about given the attorney-client privilege, 1.6, but
6 also I'm invoking the Fifth Amendment.

7 Q Let's bring up Exhibit 30.

8 [REDACTED] While we're doing that, Mr. Chesebro, I just want to ask you, based
9 on the question before this one, we have received testimony and information suggesting
10 that responsibilities were transferred from Mr. Clark and others to you and others who
11 were working with you regarding the alternate electors scheme as we defined it before.
12 Do you disagree that those responsibilities were, in fact, transferred? And I just want to
13 give you an opportunity, I guess, to correct any or provide different information than
14 what we've already received.

15 The Witness. Right. Well, my answer would be that if I disagreed, I would not
16 be at liberty to personally answer that and say things that might be favorable to myself,
17 because unless and until the Trump campaign were to authorize me to discuss whether
18 there was transfer of responsibility or a court were to hold, for example, that there was a
19 waiver of any attorney-client privilege on that subject because one or more of its
20 attorneys had already, you know, publicly discussed the subject, unless one of those
21 things happens, I can't -- I can't discuss the subject.

22 I mean, I do believe that I'm -- I'm bound by my obligation to the client to respect
23 confidences on the subject even if -- even if there's information that's partial, that is
24 unflattering to me that I could correct. I just feel obliged to maintain the privilege,
25 because I -- I have a professional obligation to maintain the client's privilege unless and

1 until it's pierced in some fashion, even -- even if it hurts me personally. I just feel that's
2 the proper way to go.

3 ██████████ Okay. So it sounds like attorney-client privilege, 1.6, and the Fifth
4 Amendment all apply to the answer to that question?

5 The Witness. To that answer, right. I mean, all this -- the entire subject matter
6 is Fifth Amendment. But if the Fifth Amendment weren't a concern, then I guess I would
7 be free to address the question you asked, if the privilege were either waived or found to
8 be inapplicable as to the subject.

9 ██████████ Okay. Thank you.

10 The Witness. I'm not expert enough to know whether whatever was said by a
11 Trump attorney would be somehow putting at issue the subject and therefore waiving
12 the privilege. That's way above my pay grade.

13 BY ██████████

14 Q Okay. Let's pull up Exhibit 30. This is another article published by The
15 New York Times containing excerpts of various email communications related to the
16 alternate electors strategy. On page two of that article, Mr. Chesebro, is an email that
17 the Times indicates that you wrote to Rudy Giuliani and other members of the legal team
18 asking whether they planned to seek certiorari after an unfavorable ruling in the Arizona
19 Supreme Court.

20 And in the email you write, quote, do you still plan to do this? If so, can you get
21 the cert petition on file by Monday? Monday being December 14th, 2020. Reason is
22 that Kelli Ward and Kelly Townsend just spoke to the mayor about the campaign's request
23 that all electors vote Monday in all contested States. Ward and Townsend are
24 concerned it could appear treasonous for the AZ electors to vote on Monday if there's no
25 pending court proceeding that might eventually lead to the electors being ratified as the

1 legitimate ones.

2 Did you write this email?

3 The Witness. Mr. Kaufmann, if this is part of what's being produced, then there's
4 no problem with that, right?

5 Mr. Kaufmann. Ken, I would advise -- I don't know -- this is from The New York
6 Times. I don't --

7 The Witness. Here's how I would answer it. If I -- any emails that I -- I wrote to
8 electors or their representatives in particular States where there was the alternate
9 elector plan being considered, those are being produced or have been produced pursuant
10 to the subpoena. And so by definition, because they're being produced to my lawyers,
11 that will authenticate them. And so there's no need for me really to discuss. You have
12 a complete file of everything that was available in my files. So -- yeah.

13 Mr. Kaufmann. And I would advise on that particular question, first, I don't
14 know -- this is from a newspaper article so I don't know what the email is. But generally
15 speaking, on that subject, I would advise you to invoke, and to this particular question,
16 advise you to invoke the Fifth Amendment privilege.

17 The Witness. So I am -- so, again, the -- what I -- the -- what I'm distinguishing is
18 between me invoking the Fifth Amendment in testimony to the committee but then
19 acknowledging that certain things that were not covered by the Fifth Amendment that
20 were properly produced according to subpoena, that those are available to the
21 committee to review. And so that would -- obviously anything that I was involved in
22 sending [inaudible] files would be better than something in the newspaper.

23

BY [REDACTED]

24 Q I'll represent to you, Mr. Chesebro, that you did not produce this document
25 to us. So if that affects your answer --

1 A No, no, no. Right. Not this -- right. So what I'm saying is that there's a
2 complete file of communications to the several States where there are electors that end
3 up on --

4 Mr. Kaufmann. Ken?

5 The Witness. -- ballots.

6 Mr. Kaufmann. Yeah, so I think that point has been made --

7 The Witness. Yeah.

8 Mr. Kaufmann. -- that we did produce those, and those do speak for themselves.
9 This was not produced by us. And so is it fair to say that you are invoking Fifth
10 Amendment, rule 1.6, and attorney-client privilege?

11 The Witness. Right, yes. As -- regarding, you know, New York Times excerpt
12 from email, I would invoke the Fifth Amendment and attorney-client privilege and 1.6.

13

BY [REDACTED]

14 Q In the message you write, quote, I just got off the phone with Mayor
15 Giuliani.

16 What if anything can you tell me about the conversation that you had with Mayor
17 Giuliani referenced in this message?

18 A Oh, I'm sorry. So, again, so in terms of testimony from my own memory on
19 the subject, I take the Fifth and invoke attorney-client privilege and rule 1.6. But
20 completely separate from that, the committee has -- can -- you know, has the actual
21 communications, which aren't subject to the Fifth Amendment, to review at its leisure.

22 Q But the select committee doesn't have a record reflecting the contents of a
23 phone conversation that you had with Mayor Giuliani, so I'm asking what you can tell us
24 about that conversation.

25 A Yeah. And I can't answer that because that would relate to attorney-client

1 privilege information, and also I'm invoking the Fifth Amendment regarding my own, you
2 know, personal recollection.

3 Q Okay. So the discussion in this email is about whether the campaign is
4 planning to appeal an unfavorable decision from the Arizona State Supreme Court. Is
5 the purpose of doing so in this case so that litigation in Arizona would still be considered
6 pending or ongoing at the time that the electors met and cast their votes on
7 December 14th?

8 A To the extent the purpose might not be clear from the text of the
9 communication itself, I, you know, decline to answer on the Fifth Amendment and
10 attorney-client privilege.

11 Q At the bottom of this message, you write that Ms. Ward and Ms. Townsend's
12 concerns are a valid point. Why did you think that?

13 A Again, that would -- that would -- that would involve privileged information,
14 attorney-client and work product, and also the Fifth Amendment also applies.

15 Q Were there other States where the status of litigation was doubtful such that
16 you or others on the campaign would have to take steps to ensure that it was ongoing on
17 December 14th?

18 A Again, Fifth Amendment and attorney-client privilege.

19 Q Okay. In this email, you also reference a conversation that Ms. Ward and
20 Ms. Townsend had with Rudy Giuliani. Can you provide me with any information about
21 what you know about that conversation between Mayor Giuliani and Kelli Ward and Kelly
22 Townsend?

23 A Even if I could recall anything beyond what was in the email, I wouldn't be
24 free to divulge it under attorney-client privilege, and also I'm invoking the Fifth
25 Amendment.

1 Q Okay. In this message, you recounted Ms. Ward and Ms. Townsend's
2 concerns that it could appear treasonous for Arizona electors to vote on the 14th if there
3 was no pending court proceeding. Tell me more about the concerns that they relayed
4 to you.

5 A Again, even if I remembered anything beyond the email, I wouldn't disclose
6 that given attorney-client privilege and given the Fifth Amendment.

7 Q Did any electors or their representatives ever express concerns to you about
8 the legality of the strategy that you and the Trump campaign were proposing?

9 A I would invoke the Fifth Amendment privilege on that. And also, it's less
10 clear whether there's an attorney-client privilege there, but it's unclear -- if it's an elector
11 not a Trump campaign official involved, then I'm not sure that the attorney-client
12 privilege could apply, but definitely the Fifth Amendment.

13 Q Okay. Did you or others on the campaign have to take any steps to
14 reassure them that the strategy you were proposing was legal, appropriate, or otherwise?

15 A I would invoke the Fifth on that, although there may be information in the
16 materials that have been produced that may -- that may answer the committee's inquiry.

17 Q Sure.

18 Mr. Kaufmann. We'll also just invoke attorney-client privilege and rule 1.6.

19 BY [REDACTED]

20 Q Okay.

21 A Both those as well.

22 Q For instance, in one of the exhibits that [REDACTED] covered with you earlier,
23 one of the other New York Times articles, it references an email that Christina Bobb sent
24 on December 12th referring to Doug Mastriano. And in that message she wrote, quote,
25 Mastriano needs a call from the mayor. This needs to be done. Talk to him about the

1 legalities of what they are doing. Electors want to be reassured that this process is legal,
2 essential for greater strategy.

3 Did you ever hear, outside of public reporting, that Senator Mastriano had
4 concerns about the legality of the elector strategy?

5 A I'm not sure I recollect anything -- that particular communication or who
6 Mastriano was. But anything I would've heard outside non-public information would be
7 privilege under attorney-client privilege and rule 1.6, but also the subject matter is
8 covered by the Fifth Amendment privilege I'm asserting.

9 Q And other than what's been publicly reported, are you aware of any
10 communications between Rudy Giuliani or anyone else on the legal team and Senator
11 Mastriano related to this issue?

12 A If I was aware, that would be covered by attorney-client privilege and rule
13 1.6.

14 Q Okay. Who chose the language that was used in the electoral certificates
15 that the electors used to cast their purported votes for President Trump in the States that
16 he had lost?

17 A I would invoke the Fifth Amendment on that and also attorney-client and
18 rule 1.6, but some of the documents produced you may -- may answer that question.

19 Q Were you aware of concerns from any of the purported electors or anyone
20 else about the specific language that was used in the electoral vote certificates?

21 A I would invoke the Fifth on that, attorney-client privilege, rule 1.6. But,
22 again, some of the documents may well provide the information that's relevant to the
23 committee on that.

24 Q Okay. Let's bring up Exhibit 12. While we're pulling it up, I'll represent to
25 you that this is a December 12th, 2020, email that you wrote to Mike Roman and Josh

1 Findlay regarding some proposed revisions to the Pennsylvania electoral certificates.

2 So you write, here is my suggested language for dealing with the concern raised in
3 the PA conference call about electors possibly facing legal exposure at the hands of a
4 partisan AG if they seem to certify that they are currently the valid electors.

5 What was the legal exposure that concerns were raised about in the context of
6 this conference call?

7 A Even if I recall the specifics, I wouldn't be free given attorney-client privilege,
8 rule 1.6 to address it, but also I'm invoking the Fifth Amendment. But it seems like there
9 are various documents that will help flesh out the committee's interest in the subject that
10 have been provided.

11 Q Okay. So below the message that you wrote, you proposed some revised
12 language in the electoral certificate. And how did the revisions that you proposed
13 address the legal exposure in your understanding?

14 A You know, even if I could refresh my recollection and review it all and give a
15 coherent answer, I would decline to answer based on the Fifth Amendment. And also, I
16 feel like it involves internal campaign lawyering, which is protected by the attorney-client
17 privilege and rule 1.6.

18 Q Okay. So we've obtained copies of the purported electoral certificates that
19 were submitted by the electors in these various States, and this revised language that you
20 proposed was submitted in two of the States, Pennsylvania and New Mexico, but not in
21 others. Why was it not submitted or used in certificates in the other States?

22 A I would love to answer that, but I'm constrained from doing that given the
23 attorney-client privilege and rule 1.6, and also I'm invoking the Fifth Amendment across
24 the board to avoid waiving my Fifth Amendment privilege.

25 Q Were you aware of any efforts to keep secret or to limit public exposure

1 regarding the fact that people were planning to meet and cast votes for President Trump
2 in these States?

3 A I mean, I'm aware from public reports afterwards about such matters. But
4 as to anything I knew ahead of time, I'd have to take the attorney-client privilege and rule
5 1.6 into consideration as preventing me from answering, and also I believe it's covered by
6 my Fifth Amendment privilege.

7 Q Okay. Let's pull up Exhibit 13. While we're pulling it up, I'll represent to
8 you that this is a December 12, 2020, email that you wrote, again, to Josh Findlay and
9 Mike Roman as well as others, regarding alternate elector coordination.

10 And you wrote, quote, Mike Roman and I were on a conference call with Mayor
11 Giuliani today, and the mayor indicated he'd like to wait until all the electors have voted
12 before putting out any statements or otherwise alerting anyone to focus on making sure
13 the vote gets done and minimize the chance of electors being harassed.

14 What can you tell us about the conference call involving you, Mike Roman, and
15 Mayor Giuliani?

16 A Again, I would invoke the Fifth Amendment privilege and attorney-client and
17 rule 1.6 confidentiality.

18 Q What concerns did you or others have about the prospects of electors
19 potentially being harassed while signing these certificates?

20 A I mean, it's addressed in the document you have, but I can't answer based
21 on my own recollection of anything related to confidentiality of the representation of the
22 client.

23 Q Are you asserting attorney-client privilege on that?

24 A Attorney-client privilege and rule 1.6, but also Fifth Amendment privilege as
25 well.

1 Q Sure. In this message, you wrote that the focus was on making sure that
2 the vote gets done. Did you have any concerns about the possibility that the vote would
3 not happen if it were publicized in advance?

4 A Fifth Amendment, attorney-client, rule 1.6.

5 Q Okay. Did you yourself attend any of the ceremonies in which these
6 individuals cast purported electoral votes for President Trump on December 14th?

7 A Again, Fifth Amendment, and I believe anything like that would be covered
8 by attorney-client privilege and rule 1.6.

9 Q Okay. I mean, I'll note that I think the fact of your attendance is likely not a
10 privileged communication, but still, I note your Fifth Amendment assertion on that issue.

11 A Yeah. I think the main thing I'm sure about is that the entire subject of this
12 alternate electors would be covered by my Fifth Amendment privilege.

13 Q Sure.

14 Next, let's pull up Exhibit 14. While we're pulling it up, I'll represent to you,
15 Mr. Chesebro, that this is a Secret Service email that we've obtained, dated
16 December 16th, 2020, and it pertains to information for guests who were slated to attend
17 a private greeting in the Oval Office that date, December 16th, at 3 p.m. And if you
18 scroll down, you'll see that your name is on this list along with a number of other
19 individuals.

20 So my question is, did you go to the White House on December 16th, 2020?

21 A I think there was a question earlier about whether I ever had a meeting with
22 President Trump and I took the Fifth on that, and also I think the Fifth and I'm not sure if
23 attorney-client privilege is covered by that. Probably not. So I would just invoke the
24 Fifth Amendment on that.

25 Q Okay. What was the purpose of this visit to the White House?

1 A In addition to the Fifth Amendment, I think in terms of the purpose of any
2 meeting that might've occurred with President Trump, that would be covered by
3 attorney-client privilege.

4 Q Are you the Kenneth John Chesebro who's listed in this email message?

5 A I think I would take the Fifth in terms of authenticating a document that is
6 related to the subject matter as to which I'm taking the Fifth. So I -- I mean, I know it
7 sounds pedantic, but I don't think I can answer that.

8 Q Okay. So I'd like to switch gears here and move off the topic of alternate
9 electors to a different but related topic, which is the role that Vice President Pence was
10 slated to play in the Joint Session of Congress on January 6th, 2021.

11 So my first question here, Mr. Chesebro, is, when's the first time that you became
12 aware of a legal theory that Vice President Pence could assert certain authorities as
13 President of the Senate during the Joint Session of Congress?

14 Mr. Kaufmann. When did he first become aware of that?

15 [REDACTED] Correct.

16 The Witness. So, Mr. Kaufmann, if there's something I can answer related to my
17 knowledge before I ever began representing the Trump campaign, I can answer?

18 Mr. Kaufmann. I think so, yeah.

19 The Witness. Yeah. So I became aware of the idea that the President of the
20 Senate presiding over the electoral count might have some authority in resolving the
21 count by around 2000. I mean, so I -- there are various law review articles discussing
22 that. So that would be my answer. That is obviously not Vice President Pence, but
23 whoever is the Vice President or the President of the Senate at any particular time. So it
24 would be -- you know, I mean, I was aware of that back in 2000.

25 BY [REDACTED]

1 Q Let me ask it a little bit differently then. When did you first become aware
2 of a proposal or a legal theory related to Vice President Pence specifically in the context
3 of the 2020 election that he could play some role during the Joint Session of Congress on
4 January 6th, 2021?

5 A I don't think I can answer that, because whenever I became aware of that, it
6 would've been likely related to work on the campaign. It's -- so I think it's -- it would
7 relate to the specifics of strategy and timing, and so I don't think I could answer that
8 under the attorney-client privilege, rule 1.6, and also I'm maintaining the Fifth
9 Amendment privilege as to the entire subject.

10 Q All right. Did you speak to anyone on the campaign or on the campaign's
11 legal team about this theory regarding Vice President Pence?

12 A Yeah. So I think it's -- across the board it's going to be Fifth Amendment,
13 rule 1.6, and attorney-client privilege on the entire subject.

14 Q Okay. Are you aware of any meetings or discussions that took place in the
15 White House in late November or early December 2020 regarding the Vice President's
16 role in the electoral certification?

17 A I think, again, that's the type of question about, you know, if I start getting
18 into what I was aware of, even if I wasn't, I feel I might be compromising the client's
19 confidences under rule 1.6. So I can't really answer anything about what -- whether I
20 knew something about this at any particular time.

21 Q Okay. Did you ever have any discussions with Vice President Pence or his
22 staff about this theory?

23 A I'm -- it would get into strategy whether I communicated with Vice President
24 Pence or his counsel at any particular point on any particular subject, so I'm not free to
25 answer that given attorney-client privilege, as he was actually one of my clients, and rule

1 1.6.

2 Q Are you asserting that Vice President Pence in his capacity as Vice President
3 rather than as a candidate for Vice President, that that -- that any communications with
4 him in that capacity are protected by attorney-client privilege?

5 A That's a good question.

6 Mr. Kaufmann. I'm not sure -- hold on a second, Ken. I don't know that we can
7 parse that in the abstract. That would require -- I think that our invocation has to be
8 linked to a specific question, and sort of asking that in the abstract would require more
9 thought and legal analysis from Mr. Chesebro's counsel.

10 [REDACTED] Okay. If it's helpful, I'll outline for you the thinking that I have
11 behind this question. Specifically, I'm interested in knowing, Mr. Chesebro, whether
12 you've had communications with Vice President Pence or his counsel related to the Vice
13 President's role in the counting of electoral votes during the January 6th Joint Session of
14 Congress. That role would be in Mr. Pence's capacity as the Vice President and as the
15 President of the Senate, a role that he already has that has no pertinent relationship to
16 his role as a candidate for Vice President in the 2020 election.

17 Mr. Kaufmann. Give us a second to go off the record and let us confer, please.

18 The Witness. Yeah.

19 [REDACTED] Sure. Let's go off the record.

20 [Discussion off the record.]

1

2 [3:32 p.m.]

3 [REDACTED] So let's go back on the record. It's 3:32 p.m. Eastern, and we're
4 resuming the deposition of Ken Chesebro.

5

BY [REDACTED]

6 Q Mr. Chesebro, before we went off the record, I had asked you whether you
7 had any discussions with Vice President Mike Pence related to any legal theories about
8 his authorities during the joint session of Congress on January 6th.

9 Did you have any such discussions?

10 Mr. Kaufmann. [REDACTED], just one point: Was it with Mr. Pence or with Mr. Pence
11 or his counsel?

12

BY [REDACTED]

13 Q Mr. Pence or his counsel.

14 A Yes. And I would invoke the Fifth Amendment privilege on that entire
15 subject matter.

16 Q Okay. We understand that you had two calls with Mike Pence's counsel,
17 Greg Jacob, on December 9, 2020, one for 2 minutes, and then the other for 17 minutes.

18 During either of those calls, did you discuss the role that the Vice President could
19 play at the joint session of Congress?

20 A Again, I would -- I would invoke the Fifth Amendment privilege on that.

21 Q Okay. Let's pull up exhibit 15, please. And while we're pulling it up, I'll
22 represent to you that this is an email exchange, Mr. Chesebro, that you had with John
23 Eastman forwarding an email that you prepared on December 13, 2020.

24 So, as you can see here, this is a message that you passed along to John Eastman
25 on January 2nd, forwarding a December 13th email. You wrote: "I did a very rough

1 email on December 13, which Boris requested on behalf of the mayor."

2 My question to you is, is it the case that you were asked to prepare a
3 memorandum regarding the Vice President's role in the joint session by someone on the
4 Trump campaign?

5 A On that, I would invoke the Fifth Amendment privilege, and then also
6 attorney-client privilege and 1.6 confidentiality.

7 Q Okay. When were you asked to prepare legal research related to this
8 issue?

9 A Beyond anything in any document we may have that addresses that, I can't
10 answer, given the Fifth Amendment privilege and attorney-client privilege and 1.6.

11 Q Okay. Did that request take place before your December 9th calls with
12 Greg Jacob?

13 A Same answer.

14 Q Okay. And just to clarify, you're asserting your Fifth Amendment rights
15 here?

16 A Yes.

17 Q Are you also asserting attorney-client privilege?

18 A Indeed.

19 Q Okay. In this email to Dr. Eastman -- I think you might need to scroll.

20 Actually, I'm not seeing it.

21 In one email communication to Dr. Eastman, you indicated that you were planning
22 on writing a memo related to the Vice President's authorities, but ultimately ended up
23 writing the cert petition for the Wisconsin litigation instead. And instead, you ended up
24 writing a rough email to Mayor Giuliani.

25 What can you tell me about the circumstances of the original request for you to

1 write this memo?

2 A Even if I recall them now, I can't answer because of attorney-client privilege
3 and Rule 1.6, but also, I'm invoking the Fifth Amendment.

4 Q So let's move to the top of this email on December 13th that you sent to
5 Mayor Giuliani. I guess my first question is, are you the Kenneth Chesebro listed here
6 who prepared this message and transmitted it to Rudy Giuliani?

7 A I don't think, consistent with my obligations under the attorney-client
8 privilege, that I could acknowledge anything attributed to me as to whether or not it's
9 genuine, unless and until it's clear that any privilege was removed.

10 Q Okay. At the top of this, you write: "As mentioned in my text, I lost the
11 several-page memo that I had nearly finished." And at the bottom of the email, which
12 we don't have to scroll through, you thanked Mayor Giuliani for seeking your further
13 input on this possible strategy.

14 My question is, what communications did you have with Rudy Giuliani about the
15 implementation of a strategy related to the Vice President?

16 A Even if I could recall discussions with Mayor Giuliani, I wouldn't be free to
17 disclose them, given the attorney-client privilege and Rule 1.6. And moreover, I'm
18 asserting the Fifth Amendment privilege as to the entire subject.

19 Q In the third paragraph of this email, you wrote: "I have not delved into the
20 historical record." But then you add: "Vice President Pence's counsel has and seems
21 totally up on this, and I'm sure there are many other lawyers who can add a great deal."

22 Is this a reference to your December 9th phone calls with Vice President Pence's
23 counsel, Greg Jacob?

24 A You might infer that from the document, but I can't acknowledge anything,
25 given my obligations under the attorney-client privilege, Rule 1.6, and also I'm taking the

1 Fifth Amendment.

2 Q Let's scroll down. This is a long message, but I'd like to move to the
3 paragraph beginning "he then opens," which is in page 2. There you go.

4 So in this part of the message, you propose that the president of the Senate
5 would, quote, "open the two envelopes from Arizona, and announces that he cannot and
6 will not, at least as of that date, count any electoral votes from Arizona because there are
7 two slates of votes, and it is clear that the Arizona courts did not give a full and fair
8 opportunity for review of election irregularities, in violation of due process."

9 Was it factually true that there would be two slates of votes from the contested
10 States, even if a court or legislature had not determined that President Trump had won a
11 given State?

12 A I can't get into the substance of any legal analysis related to January 6th or
13 to this memo. So, I mean, you know, as an abstract matter, maybe in another forum, I
14 would address something like that. But now I'm -- for now, I'm taking the Fifth
15 Amendment privilege. And also, I'm constrained by attorney-client and Rule 1.6
16 confidentiality.

17 Q Okay. This passage also contemplates that a court would not have
18 determined that President Trump had won in Arizona by the January 6th joint session.
19 What then would be the rationale for the President of the Senate taking the position that
20 the legitimate electoral college votes could not be opened and counted?

21 A I really can't address the subject matter, given my Fifth Amendment privilege
22 assertion. If it is -- if I started getting into details related to the substance of the memo,
23 even independent from campaign strategy, then that might waive my Fifth Amendment
24 privilege. So I have to be cautious on the scope.

25 Q On page 3, you continue and you write -- you propose that the President of

1 the Senate would say that if Arizona wants to be represented in the electoral count,
2 either it has to rerun the election or engage in adequate judicial review, or have its
3 legislature appoint electors.

4 In your view, what is the source of the constitutional authority for the President of
5 the Senate to make that determination?

6 A Again, I can't get into the substance of anything I did or advocated during the
7 campaign. I'm asserting the Fifth Amendment privilege. Probably there's a lot of stuff
8 in -- in this document or in things cited in it which would answer that question, but I'm
9 unable to address that.

10 Q Okay. Another topic that is covered in this memo suggests that the Vice
11 President could recuse himself from the joint session as an interested party in the
12 counting of the electoral votes.

13 Did you have any conversations with Rudy Giuliani, Boris Epshteyn, or anyone else
14 on the legal team about the possibility of Vice President Pence recusing himself during
15 the joint session?

16 A Fifth Amendment and attorney-client privilege and Rule 1.6 on that.

17 Q To your knowledge, was then-Senate President Pro Tem Chuck Grassley or
18 anyone on his team ever approached about that possibility?

19 A There have been public reports that he never contemplated it, but I can't,
20 you know, address anything I might know that's not public, given attorney-client privilege,
21 Rule 1.6, and also the Fifth Amendment.

22 Q Various throughout this memo you reference the possibility that Federal
23 Courts, including the Supreme Court, might decline to take any action on the actions that
24 you propose, based on the political question doctrine, and that even if it did reverse, it
25 would only come after a number of additional days of delay.

1 Did you ever discuss the possibility that Federal Courts would decline to hear
2 litigation related to this issue on the basis of the political question doctrine?

3 A I think this was widely discussed at the time publicly, in part, because
4 Professor Tribe had advocated that view in a 2009 Harvard Law Review article very
5 strongly. But I -- but as to anything that would be internal to the campaign, I wouldn't
6 be at liberty to disclose that, given attorney-client confidentiality and Rule 1.6, and then
7 also I'm maintaining the Fifth Amendment privilege on the entire topic.

8 Q We understand that during this period of time, John Eastman advocated
9 against litigation related to the Vice President's authority, including cases like Gohmert v.
10 Pence, specifically, because it might prompt an unfavorable ruling on the legal question.

11 Did you have any conversations with anyone on the legal team about those types
12 of concerns?

13 A Even if I recollected some discussion on that, I wouldn't be free to disclose it,
14 given attorney-client privilege and Rule 1.6, but also maintaining Fifth Amendment
15 privilege as to the entire subject.

16 Q Okay. So in the message that you proposed to Mayor Giuliani on
17 December 13th, you are proposing a scenario where the Vice President is taking action, in
18 part, by making a determination that preexisting court litigation is invalid, and you are
19 also arguing in this message that any such action might potentially be unreviewable on
20 political question grounds.

21 You spoke with a reporter in June of this year on this question, and you told that
22 reporter, quote: "If there is a nonfrivolous argument concerning the meaning of the
23 Electoral Count Act or its constitutionality, it's legitimate to press that and let the courts
24 decide. We have a system where the courts ultimately resolve these issues and people
25 can live with how the courts resolve them."

1 How do you square that with the proposal that you're making here, which
2 specifically contemplates actions that disregards previous court rulings and potentially
3 forecloses future court rulings?

4 A Well, actually, the beginning of your question, I think, inaccurately described
5 the December 13th email you reference as urging that the Vice President intervene in the
6 counting.

7 I believe the December 13th memo specifically advocates the Vice President leave
8 the building, have nothing to do with the count, and only rely on the President of the
9 Senate to preside over the count, because then he wouldn't have a conflict of interest
10 except for a partisan interest. That's my reading -- my recollection from the email.

11 So -- so I just wanted to clarify that part of your question, I think, was inaccurate in
12 thinking it suggested some action be urged on Vice President Pence.

13 But as to the quote from the article by the reporter, I think there's -- I think that
14 was referring to litigation in the States over who had won particular States. That's a
15 different issue than how you would resolve an issue in Congress as to the role of -- of the
16 President of the Senate in the count.

17 But -- so that -- so I think I was addressing -- I mean, I understand your quote was
18 accurate, but I think it was addressing litigation in the States, not litigation over the core
19 question of who counts the votes.

20 But as to -- you know, as to the overall subject matter, I'm still maintaining the
21 Fifth Amendment privilege in terms of anything related to my actions during the
22 2000 -- 2000 -- 2020 and 2021.

23 Q Did the Trump campaign ever press litigation calling into question the
24 meaning of the Electoral Count Act or its constitutionality in litigation in the 2020
25 election?

1 A I don't -- I don't -- I don't personally recall whether there was litigation over
2 that. So I can't really answer that.

3 Q So, to the extent that there's a question about the constitutionality of the
4 Electoral Count Act, in your view, would that have likely related to the process for
5 counting electoral votes during the joint session of Congress?

6 A No. I think everybody knew that whether or not the Electoral Count Act
7 was constitutional was -- was a key factor in what would happen throughout the election.
8 But that was true also in 2000. That was an intense object of inquiry. So that's
9 obviously central to how post litigation -- postelection litigation is handled and what
10 happens in Congress. So this is no -- it's not novel that this would be central to any
11 campaign.

12 Q So let me re-read this quote to you. You're writing, or you're saying to this
13 reporter: "If there is a nonfrivolous argument concerning the meaning of the Electoral
14 Count Act or its constitutionality, it's legitimate to press that and let the courts decide."

15 A Oh, I see. Oh, okay. I didn't listen to that. So that -- I'm sure I said that
16 to the reporter. And so, yes, there -- that, ideally, litigation over the constitutionality of
17 any act of Congress can be resolved by the courts. That's one's hope.

18 Q I mean , I think what I'm struggling with here is that in the proposal that
19 you sent to Mayor Giuliani on December 13th, you are both proposing a scenario where
20 the President of the Senate makes a determination that a court's review of election
21 challenges has been insufficient and taking an action that you would also argue is
22 unreviewable by a further later Federal Court on political question grounds.

23 So I guess what I'm trying to square here is how this December 13th email sort of
24 squares with, you know, the principle that courts should decide legitimate legal questions
25 regarding the meaning of the Electoral Count Act.

1 A So, again, I think I can't get into the details, given the Fifth Amendment
2 privilege. But I think everyone recognizes that if you can have a court -- in general, if
3 you can have a court authoritatively resolve the constitutionality of a statute, that's ideal.

4 But if a court won't do it, then that creates -- that affects the strategy that
5 anybody would -- would use in trying to decide, you know, what to do in a particular
6 litigation posture.

7 So I don't think -- so -- but I don't think I can address the substance of the
8 argument without risking getting into the substance and -- and waiving my Fifth
9 Amendment privilege.

10 So I understand that you're pointing to an inconsistency between something I said
11 to the reporter and something that's attributed to me in a memo, at least you can argue
12 there's an inconsistency, but I don't feel I can -- you know, I can get into the specifics.

13 Q Is that, what you just described, part of the rationale that you discussed with
14 members of the Trump campaign in the lead-up to the January 6th joint session 2021?

15 A I wouldn't be able to get into any specific discussions even if I recalled that
16 level of detail, given attorney-client privilege and Rule 1.6. But, as I started addressing it
17 when you first asked me about this, it was widely discussed that -- that a number of legal
18 scholars, including Professor Tribe, thought that the Supreme Court should not get
19 involved in litigating these issues. It's inherently a political question.

20 So I think there were people on the Trump side that were publicly saying, Okay,
21 well, we'll take that view and that happens to help us in this situation, just as it would
22 have helped Gore in 2000. So this is just, you know, whichever side has benefited from
23 the political question doctrine, they'll -- they'll invoke it. That's just the way it is.

24 Q President Trump's campaign had the opportunity to raise these issues before
25 the courts, and yet, they did not in 2020. Do you know why they didn't?

1 A I don't have any ability to address that level of strategy even if I had
2 familiarity with the internal deliberations, given the attorney-client privilege and Rule 1.6.

3 Q Okay. I think we can move on.

4 So, Mr. Chesebro, we understood -- understand that on December 23, 2020, you
5 received a 42-minute phone call from John Eastman at 9:09 a.m. Eastern. That's the day
6 that we understand that he was asked to prepare the first of two memos that he
7 ultimately wrote about Vice President Pence.

8 What can you tell us about the conversation that you had with Dr. Eastman that
9 morning?

10 A Obviously, I'm not free to discuss the specifics of anything I discussed with
11 him as much as I would love to, but there were other things happening in -- in the case at
12 the time, that if you look at the public record and documents you'll see that there was a
13 lot happening that had nothing to do with -- with memos attributed to him. So -- but I
14 can't get into the specifics of what I discussed with him, unfortunately. And also --

15 Q Do you -- sorry, go ahead. I cut you off there. I just want to make sure
16 that the record reflects the end of your answer.

17 A Yeah. No, I'm just saying that any -- any implication that our discussion had
18 anything to do with his memos related to January 6th is open to question, given that
19 there was other -- other -- other things that were happening of a litigation nature at the
20 time, but I can't get into the specifics, unfortunately.

21 So I just wanted to push back on any suggestion that you would -- that you would
22 infer that that lengthy telephone discussion had anything to do with his -- his memos that
23 are under scrutiny.

24 Q Okay. Well, we're also aware of numerous email and phone exchanges
25 that you and Dr. Eastman had that day, and we can show some of them to you now.

1 So let's pull up exhibit 16 to start.

2 This is an email that you wrote to Dr. Eastman on December 23rd at 11:06 a.m.
3 Eastern, with subject matter Tribe's argument that the Supreme Court should stay out of
4 election disputes, based on political question doctrine. And you send him a cite for a
5 legal article that Mr. Tribe wrote and then you wrote "probably include cite in memo."

6 Why did you send this?

7 A Even if I recalled specifically what I discussed with him, that would be, I
8 think, attorney-client privileged information, Rule 1.6. And also, I'm invoking the Fifth
9 Amendment on the whole subject.

10 Q You write here: "Include cite in memo." At this -- is it fair to say that at
11 this point in time, you knew that Dr. Eastman was preparing a memo about the Vice
12 President's role in the joint session of Congress?

13 A Even if I could recollect now exactly what they related to, I mean, I wouldn't
14 be free to discuss internal strategy.

15 Q Okay. Let's pull up exhibit 17.

16 So 4 minutes after the email that I just showed you, Dr. Eastman sent you an email
17 at 11:10 a.m. He attaches a memo titled "January 6th scenario" with the subject line
18 "first draft."

19 Did you know that this memo was forthcoming from Dr. Eastman, and had you
20 agreed to help review and provide feedback on it?

21 A Even if I recollected the specifics, I wouldn't be free to disclose them, given
22 Rule 1.6 and attorney-client privilege. And, of course, I'm maintaining the Fifth
23 Amendment privilege.

24 Q Did you, in fact, provide any feedback to Dr. Eastman about his draft memo?

25 A Same answer: Fifth Amendment, Rule 1.6, attorney-client privilege.

1

BY [REDACTED]

2

Q Okay. Can I just be clear for the record. SO you're asserting

3

attorney-client privilege and Rule 1.6 here.

4

Are you saying that your communications with John Eastman around this time in

5

late December about his memo and that we're discussing here is within the scope of the

6

legal services for which you were retained by the campaign?

7

A So what I'm saying is that --

8

Mr. Kaufmann. Ken --

9

The Witness. The campaign has specifically instructed me to maintain any

10

possible privilege. And without getting into the specifics, I think I have to maintain

11

privilege as to anything that the campaign might have asked me to do. And, you know, I

12

just can't -- I can't -- it's not a unilateral decision as to what is within that scope of

13

representation.

14

So I do know that Professor Eastman was -- was in some capacity an attorney for

15

the Trump campaign. So this is an attorney-to-attorney communication relevant to the

16

subject of the representation. So I just feel like I have to assert the privilege, I mean,

17

absent further clarification.

18

[REDACTED] Okay. And thank you for clarifying that on the record.

19

BY [REDACTED]

20

Q So we'll pull up exhibit 20 for you, Mr. Chesebro. This is your response to

21

Dr. Eastman's email with the subject line, "draft two with edits" and contains an

22

attachment titled, "privileged and confidential-December 23 memo on Jan 6 scenario."

23

We can show you the attachment to that, but I'll represent to you that it's a

24

standard Word document. We'll actually pull up exhibit 22 for you, which is a redline

25

that we've prepared between the draft that you received from Dr. Eastman and the draft

1 that you sent back. So the red underlined portions you can see here we believe
2 represent the revisions that you made to the memo.

3 So I guess my first question is, do you recall making revisions like this to the
4 document that you received from John Eastman?

5 A I mean, even if I recall it, I wouldn't acknowledge anything related to the
6 strategy of the campaign under attorney-client privilege and Rule 1.6, and also, I'm
7 maintaining the Fifth Amendment privilege.

8 Q Okay. Into the first paragraph of this memo, you inserted the sentence:
9 "There is very solid legal authority, and historical precedent, for the view that the
10 President of the Senate does the counting, including the resolution of disputed electoral
11 votes (as Adams and Jefferson did while Vice President, regarding their own election as
12 President) and all the Members of Congress can do is watch."

13 What was the basis for adding that to Dr. Eastman's memo?

14 A That would involve my mental impressions about handling the
15 representation. So I'm not free to disclose it under attorney-client privilege and Rule
16 1.6, but also, I'm maintaining the Fifth Amendment privilege.

17 Q Okay. The first sentence of this memo, which Dr. Eastman wrote and which
18 you did not edit, reads that "Seven States have transmitted dual slates of electors to the
19 President of the Senate."

20 At the time that this memo was written on December 23rd, was it factually true
21 that seven States had, in fact, transmitted dual slates of electors?

22 A I don't know what exactly that sentence means or -- you're asking me now.
23 I can't answer that. I mean --

24 Q On what basis?

25 A I know there were alternate electors' votes sent in. I don't know if that

1 means that they're dual slates. I don't know what he was referencing, so it's hard for
2 me to answer that.

3 Q Okay. Did you ever have any conversations with John Eastman about
4 whether the electoral slates that had been transmitted were, in fact, dual slates of
5 electors that had been received by the President of the Senate?

6 A I know there was -- there's at least one or two conversations I've had with
7 him at some point, but I don't recall the subject. And so I -- you know, and, again, even
8 if I did recall --

9 Mr. Kaufmann. Ken. Excuse me, Ken.

10 The Witness. -- I don't think I can answer due to the attorney-client privilege and
11 Rule 1.6. And, of course, I'm asserting the Fifth Amendment on the entire subject.

12

BY [REDACTED]

13 Q When did those conversations with John Eastman take place, to the best of
14 your recollection?

15 A So that's not privileged. Sometime in December is the best I can recall, but
16 I'm not sure there's more than one or two and I don't know when.

17 Q Do you know if it was before or after he prepared this memo?

18 A I just have no recollection. There's presumably phone records that would
19 reveal that, but I don't know of any -- I can't say that I had any phone discussion with him
20 around this time, but it could just be I don't recall.

21 [REDACTED] Okay. Mr. Kaufmann, I saw you weigh in. I don't know if you
22 want to say something on the record or otherwise.

23 Mr. Kaufmann. Oh, I just -- I just wanted to -- yeah. I mean, I think, going back
24 to [REDACTED] earlier question, communications between Eastman, who, as we understand,
25 was a campaign lawyer, and Ken, who was a campaign lawyer, relating to legal strategy,

1 legal analysis and so forth, we would submit, are subject to the attorney-client privilege.

2 Could we take five?

3 [REDACTED] Absolutely.

4 Mr. Kaufmann. Thank you.

5 [Recess.]

6 [REDACTED] All right. We are back on the record.

7 BY [REDACTED]

8 Q Mr. Chesebro, I just wanted to ask you one more question about the memo
9 that we've been discussing with you.

10 In the email that you sent to John Eastman attaching this document, you wrote,
11 quote, "really awesome." What did you mean by that?

12 A That then -- that's a term that's subject to interpretation, but I don't think I
13 can answer that, given the Fifth Amendment privilege that I'm asserting.

14 Q Okay. Did you speak to anyone other than Dr. Eastman about the revisions
15 that you made to his draft memo?

16 A Even if I could recall or go back and address that, I think that's covered by
17 attorney-client privilege and Rule 1.6. And, of course, I'm asserting the Fifth
18 Amendment.

19 Q Okay. Let's pull up exhibit 23.

20 While we do that, I'll represent to you that this is a December 23, 2020, email sent
21 at 11:40 a.m. Eastern. This email is one that Dr. Eastman sent to Boris Epshteyn,
22 copying you. It forwards your email with the subject line "draft 2, with edits" and
23 contains the attachment with the same title as the document that you sent to
24 Dr. Eastman earlier.

25 Do you know why Dr. Eastman sent this to Boris Epshteyn?

1 A If I -- if I knew why, I don't think I could disclose it. That would be covered
2 by the attorney-client privilege and Rule 1.6.

3 Q Is this a document that Boris Epshteyn or anyone else on the Trump
4 campaign asked Dr. Eastman to prepare?

5 A I mean, I don't think I can get into whether I knew what was requested of
6 particular attorneys or not. So I think I have to decline to answer that, based on
7 attorney-client privilege and Rule 1.6.

8 Q Are you also asserting your Fifth Amendment privileges here?

9 A Yes. May I just -- yeah, to the entire subject matter, I guess, yeah.

10 Q We're just trying to get that on the record on a question-by-question basis.

11 A Okay.

12 Q So we understand that on the same day that you and Dr. Eastman
13 corresponded about this issue and the same day that Dr. Eastman sent this memo to
14 Boris Epshteyn, Dr. Eastman participated in a phone call with the White House at 1:37
15 p.m. after requesting to update President Trump on his, quote, "strategic thinking." Did
16 you participate in that call?

17 A I don't think I can get -- I can -- I can -- I think I can answer whether I
18 communicated with particular people, but I don't think I can answer whether I was in a
19 particular meeting or call on a particular subject, because I think that --

20 Mr. Kaufmann. Let me -- can we go -- Ken, let's talk real quick.

21 The Witness. Okay, yeah. Start with that.

22 [Discussion off the record.]

23 [REDACTED] Let's go back on.

24 BY [REDACTED]

25 Q So, Mr. Chesebro, I'm going to ask the question hopefully in a slightly more

1 refined way. So we understood that John Eastman spoke with the White House by
2 telephone at 1:37 p.m. on December 23, 2020, and that the call lasted for 22 minutes and
3 52 seconds.

4 Did you participate in that phone call?

5 A Mr. Kaufmann assured me that I could answer if the answer is no. And I
6 have no recollection of ever knowing that there was any such call until you just asked me
7 about it.

8 Q Okay. Did you ever find out what happened on this call, or alternately, ever
9 hear of any discussions between John Eastman and President Trump on the topic of his
10 memo?

11 A I had no knowledge of that until eventually what, months later, information
12 leaked out publicly. I had no knowledge of any of that.

13 Q Okay. Ultimately, we know that Dr. Eastman prepared another related
14 memo on this issue on or around January 3rd. Do you know why he prepared a second
15 memo about the Vice President's role during the joint session of Congress?

16 A I have no recollection of knowing that. I mean, it's possible I knew
17 something about it at the time, but I don't have any recollection of ever knowing that.

18 Q Do you recall knowing whether the memo that we just discussed, the
19 December 23rd memo, or any other John Eastman memo, was sent to anyone in the
20 White House during this period?

21 A Yeah. I just have no -- I have no recollection of ever knowing at the time
22 exactly what John Eastman was or wasn't doing regarding the White House. I mean,
23 obviously, I have read a lot of stuff since then.

24 Q Other than what's been publicly reported, do you have any knowledge of
25 any conversations involving President Trump and Vice President Pence about the Vice

1 President's role on January 6th?

2 A No.

3 Q Did you ever learn or do you have any knowledge about any conversations
4 involving President Trump and Rudy Giuliani regarding Vice President Pence's role on
5 January 6th?

6 A No. I mean, just -- I mean, I've read a lot about it since then, but not -- not
7 any knowledge derived from my work on the campaign.

8 Q Okay. It's been publicly reported and we understand through our
9 investigation that President Trump, Vice President Pence, and John Eastman met on
10 January 4, 2021, in the White House and spoke about the Vice President's role in the joint
11 session of Congress.

12 Do you have any knowledge of that outside of public reporting?

13 A No.

14 Q Okay. Do you have any knowledge about a meeting between Greg Jacob
15 and John Eastman that took place on January 5th about the Vice President's role in the
16 electoral certification?

17 A Other than the publicly reported accounts in the last year, no.

18 Q Okay. Did you ever explore similar theories other than Dr. Eastman's
19 theory for options to disrupt or delay the joint session of Congress on January 6th?

20 A If I had any further input on the subject of what would or wouldn't happen
21 on January 6th, that would be covered by the attorney-client privilege or Rule 1.6, and I
22 would take the Fifth Amendment privilege on that.

23 But I would -- I would also object to the disrupt or that I would ever do anything as
24 a lawyer to disrupt or delay, do anything improper related to a proceeding in Congress.

25 Q Okay. Let's pull up exhibit 28.

1 While we're pulling it up, I'll represent to you, Mr. Chesebro, that this is a January
2 5, 2021, email that you wrote to John Eastman.

3 You sent him a few Law Review articles, and then a little lower down in the email
4 you write: "What these two articles suggest is that to disrupt the Electoral Count Act
5 and its timetable, which is our enemy, we don't need Pence to invoke the sole power to
6 open the envelopes and/or count the votes. We only need to have Pence say that as
7 best he can tell, it's unconstitutional for the Houses to separate and vote separately. If
8 Congress counts the votes, it has to do so in joint session."

9 What did you mean when you wrote that the Electoral Count Act was, quote, "our
10 enemy"?

11 A I have no -- I mean, I have no recollection of writing this, but I mean,
12 presumably it was filed in some files and presumably I did, but -- so I don't -- not
13 recollecting writing it at, all and given the fact that I'm asserting the Fifth Amendment,
14 and this would also relate to attorney-client privilege and Rule 1.6 materials, I don't think
15 I can answer.

16 Q Is it fair to say that, as you wrote in this email, the purpose was to disrupt
17 the Electoral Count Act and its timetable, which involved the joint session of Congress on
18 January 6th?

19 A You can read it as well as I can. I mean, it's analyzing legal theories in a Law
20 Review article and relating them to options available to the campaign, I mean. So, I
21 don't -- there's nothing I can add, consistent with the privileges that I'm invoking.

22 Q Well, I guess tell me what you meant when you used the word "disrupt"
23 then?

24 A Again, I can't, consistent with the Fifth Amendment privilege I'm asserting,
25 start addressing particular documents you show me that I may or may not even recall

1 having written without risking waiving the privilege. So I just have to adopt it across the
2 board.

3 There's many things I haven't been able to testify about that would be very
4 favorable to me, because I'm hemmed in by the attorney-client privilege. And so this is
5 one of them as well.

6 Mr. Kaufmann. And for the record, we're just -- we're -- Ken has invoked his Fifth
7 Amendment privilege. And then also, our view is this is a privileged email. Questions
8 about it are subject to attorney-client privilege and Rule 1.6.

9 [REDACTED] Understood. Thank you, Adam.

10

BY [REDACTED]

11 Q So let's pull up exhibit 29.

12 This, Mr. Chesebro, is a fairly long December 24, 2020, communication involving
13 yourself, Dr. Eastman, Judge Troupis, a number of other individuals affiliated with the
14 Trump campaign, like Justin Clark, Matt Morgan and others. And I'll represent to you
15 that the general topic of discussion on this email chain is about appealing a Pennsylvania
16 State Court decision to the Supreme Court.

17 I'm going to take you down somewhat in this chain to a December 24th email that
18 you wrote at 7:41 a.m. In our document, it's sort of at the bottom of page 3, moving
19 into page 4.

20 So if you scroll down a little bit further, there's a sort of bolded header that reads
21 "possible political value." And there you write, quote: "The relevant analysis, I would
22 argue, especially if the resource constraint is removed is political."

23 And you write: "Just getting this on file means that on Jan 6, the Court will either
24 have ruled on the merits or, vastly more likely, will have appeared to dodge again
25 (declining to rule; the point is that the Court can and should rule after Jan 20. If it

1 doesn't expedite, hopefully will prevent a loss before Jan 6.)

2 You write that: "This will feed the impression that the courts lack the courage to
3 fairly and timely consider these complaints, and justifying a political argument on January
4 6 that none of the electoral votes from the States with regard to which the judicial
5 process has failed should be counted."

6 What did you mean when you wrote that?

7 A Again, I don't think I can get into it, consistent with my invoking the Fifth
8 Amendment privilege. And it's also the same core attorney-client privileged material, as
9 far as on its face it's outlining options for the campaign's effort to take every opportunity
10 to try to prevail in the contest. So I just don't think it's something I can address.

11 Q Slightly above this, you evaluate the odds of legal relief here, and you say,
12 quote: "As far as the odds that the Court would grant effective relief before January
13 6th, I'd say only 1 percent." And above that, you write that the likelihood of a court ever
14 finding in your favor, at any point in time, is no more than 5 percent.

15 I guess my question is, why did you have confidence in the January 6th strategy
16 that you had outlined if you thought that there was such a low likelihood that a court
17 would ever grant effective relief on these legal arguments?

18 A That clearly goes to matters of legal strategy that are protected by the
19 attorney-client privilege and Rule 1.6. And also, I'm invoking the Fifth Amendment on
20 that.

21 Q Let's scroll down a little bit. You write at the -- in the bottom paragraph
22 here, quote: "I think having, as many States still under review (both judicially and in
23 State legislatures) as possible is ideal, even if the only political payoff ends up being
24 simply either a bolstering of the argument that there should at least be extended debate
25 in Congress about the election regularities in each State or, alternately, the public should

1 come away from this believing that the election in Wisconsin was likely rigged and stolen
2 by Biden and Harris, who were not legitimately elected."

3 What did you mean when you wrote that passage?

4 A Even if I recall specifically the context, I don't think I could get into it, given
5 the Rule 1.6 confidentiality, attorney-client privilege, and I'm also invoking the Fifth
6 Amendment.

7 Q Why did you think it was important that the public believe that Joe Biden
8 wasn't legitimately elected President?

9 A Again, same answer, Fifth Amendment and attorney-client privilege.

10 Q Okay. Later in this chain, at 9:54 p.m. on December 24th, you wrote
11 another email. For our purposes, this is at the bottom of page 2. You just passed it.
12 A little further down, please. Yes, there you go.

13 So in the paragraphs right here that you write, Mr. Chesebro, you wrote, quote:
14 "I think the odds of action before Jan 6 will become more favorable if the Justices start to
15 fear that there will be, quote, 'wild' chaos on January 6 unless they rule by then either
16 way. Though that factor could go against us on the merits. Easiest way to quell chaos
17 would be to rule against us -- our side would accept that result as legitimate."

18 What did you mean when you referred to the potential for wild chaos on January
19 6th?

20 A Even if I recalled the specific context, I don't think I can disclose it, because it
21 relates to the strategy of the campaign. So it's protected by privilege, attorney-client
22 privilege and Rule 1.6. And also, I'm asserting the Fifth Amendment privilege.

23 Q Was your use of the word "wild" here in any way related to President
24 Trump's December 19th tweet that called his supporters to Washington, D.C. and used
25 the language, quote, "be there, will be wild"?

1 A The same answer. Even if I could recollect having written this and
2 specifically what I meant, I wouldn't be free to disclose it, given attorney-client privilege
3 and Rule 1.6, and the Fifth Amendment privilege I'm asserting.

4 Q Thank you. We can take the exhibit down.

5 I only have a few more questions for you, Mr. Chesebro. The first is, did you ever
6 visit the Willard Hotel in Washington, D.C., during the post-election period?

7 A Oh, no. I mean, I was once there years before, but yeah, not during that
8 period.

9 Q Okay. Did you ever speak with John Eastman or anyone on the Giuliani
10 legal team about the work that they were doing at the Willard Hotel?

11 A No.

12 Q Did you have any role in planning or preparing for any of the rallies that took
13 place in Washington, D.C. on January 6, 2021?

14 A No.

15 Q In the days leading up to January 6th, were you aware of any discussions
16 about encouraging people to go to the Capitol on January 6th?

17 A Discussions? I mean, apart from -- I mean, I knew there was some sort
18 of -- something planned. You mean discussions internal?

19 Q Internal discussions outside of what you would have seen publicly reported?

20 A No, none.

21 Q Are you aware of anything that President Trump said -- and, again, this is
22 other than what he said publicly -- about what might happen with the certification during
23 the joint session of Congress on January 6th?

24 Mr. Kaufmann. I'm sorry, Josh, was there a timeframe for that? Anything
25 President Trump said in any specific period of time or ever?

1 [REDACTED] Well, we can ask it two ways.

2

BY [REDACTED]

3

Q So let's start by asking between November 3, 2020, and January 6, 2021, are
4 you aware of anything that President Trump said, not in public, about what might happen
5 with the joint session of Congress on January 6th?

6

A So -- yeah, I guess I should talk to Adam about that. Talk about --

7

Mr. Kaufmann. So let me just say that it's probably -- we'll talk. Let us talk.

8

[REDACTED] Let's go off the record.

9

[Discussion off the record.]

10

[REDACTED] Let's go back on.

11

BY [REDACTED]

12

Q Mr. Chesebro. Do you need me to repeat my question?

13

A No. It was whether I -- well, maybe you should, just for clarity.

14

BY [REDACTED]

15

Q Sure. For clarity for the record, my question was: Between November 3,
16 2020, and January 6, 2021, are you aware of any statements that President Trump made
17 in that time period, not in public, about what might happen during the joint session of
18 Congress on January 6, 2021?

19

A So Mr. Kaufmann clarified the things that didn't happen I can testify to.

20

And so I can testify that I never heard anything said directly with Mr. Trump or by anyone
21 relating hearsay regarding anything that he thought would happen on January 6th. That
22 is, I might have read news reports at the time that anyone could have read, but nothing
23 related to my work as a lawyer that related to anything that he had said about January
24 6th.

25

Q Okay. The same question, but any statements by President Trump related

1 to changing the outcome of the election result?

2 Mr. Kaufmann. Objection. I think --

3 The Witness. I mean, that goes to litigation strategy, trying to win in the States.
4 And if I can recall specific things to attribute to him, I don't think I could -- I mean, that's
5 just -- that's attorney-client communication. That's really core to, you know, the work
6 on the case. So I don't think I could answer that, consistent with attorney-client
7 privilege and Rule 1.6.

8

BY [REDACTED]

9 Q Okay. So I'm just going to sort of postdate the original question here
10 related to statements made after January 6th. So since January 6, 2021, are you aware
11 of any statements that President Trump has made, not in public, about January 6th or the
12 joint session of Congress?

13 A No, nothing, again. There's no way I would know of anything like that.

14 Q Okay. Were you in Washington, D.C. during the last week of December,
15 the first week of January, leading up to the joint session?

16 A I think just on that subject in terms of presence in Washington, D.C., I think
17 I'll just take the Fifth Amendment to the whole subject matter. I mean, unless I'm
18 required to, I just think that's sort of the subject matter of -- related to January 6th, I think
19 I want to --

20 Mr. Kaufmann. I'm advising you to invoke your Fifth Amendment privilege on
21 that.

22 The Witness. Yeah, yeah. Just it seems -- yeah.

23 Mr. Kaufmann. Just once you've invoked, that's fine.

24 The Witness. Yeah. I mean, I've already answered the questions about contact
25 with various people. Yeah. Okay, thank you.

1 [REDACTED] Okay. Before I ask a final few questions, I just want to check
2 back in with the participants online and see whether any members who are still present
3 or any other staff have any questions that they'd like to follow up with?

4

BY [REDACTED]

5 Q I have a follow-up clarification question for you. You've mentioned now a
6 couple times that a communication or an email might be relevant to your work on the
7 case. What do you mean by "the case"?

8 A Oh, the representation involving the campaign's effort to -- you know, to
9 explore every option for prevailing in the contest. So I know that's not, you
10 know -- when I say -- when I refer generally, I talk about the representation, which, of
11 course, started in Wisconsin, but then it expanded in some ways, that, you know, maybe
12 it's not completely clear at any particular point what the scope of the representation is,
13 but I'm taking the broadest view, because the campaign has said I must maintain the
14 privilege. And then if there's any gray areas as to what my role actually was, that can be
15 determined by a court or by stipulation. So I just mean the representation itself as it
16 evolved.

17 [REDACTED] Thank you.

18

BY [REDACTED]

19 Q One follow-up question: Mr. Chesebro, I believe you had testified earlier
20 that your attorney-client relationship with the Trump campaign began after the 2020
21 Presidential election. Is that right?

22 A Yes.

23 Q Okay. And I think you answered a question earlier today about whether
24 before you entered into an attorney-client relationship with the Trump campaign
25 whether you were aware of the concept of -- or the role of the Vice President at the joint

1 session. Is that right?

2 A Yes. Sure.

3 Q Okay. I wanted to ask you the same question about a topic that came up
4 earlier today, and that is the potential appointment of electors by a State legislature.
5 Were you aware of that concept before you entered into a privileged relationship with
6 the Trump campaign?

7 A I believe -- I believe I looked a little of that in 2020, although it wasn't
8 centrally involved in the Bush v. Gore litigation.

9 Mr. Kaufmann. I'm sorry, Ken. You said you looked a little of that in 2020 or
10 2000?

11 The Witness. Yeah, but I had -- I had much more knowledge of the Electoral
12 Count Act back in 2000 than alternate electors. So I think -- I think I knew -- I knew
13 something about alternate electors, for example, having voted in 1877, and then in 1960,
14 but I knew much less about that than I did about -- about the Electoral Count Act, which I
15 researched extensively back in 2000. And, in fact, I wrote a memo that speculated that
16 perhaps Vice President Gore could elect himself President by breaking a tie in the Senate,
17 sitting as Vice President.

18 So there was a lot of very interesting complex issues with the Electoral Count Act,
19 even back in 2000. So -- but I knew less about the alternate electors, sort of that being
20 an option.

21

BY [REDACTED]

22 Q Sorry. Just to clarify, you say you learned -- you knew less of it. Are you
23 saying that you knew less of it in the year 2000 compared to what you knew in the year
24 2020?

25 A I think I always before the -- before the -- the November 2020 election, I

1 knew much more about the Electoral Count Act going back to 2000. And I had read
2 books and articles since then, just because it was of great interest to me.

3 And I knew much less about the -- the historical precedent of 1877. I mean, I've
4 read all the books on that election, where there were two slates of electors. And I
5 vaguely knew that it happened in 1960 in Hawaii, but I didn't have a great level of detail
6 about that. But I generally knew of it.

7 And actually, there was a CNN article by Larry Lessig, the Harvard Law professor,
8 around November 8th, just after the election, suggesting that if Biden was behind in
9 Pennsylvania, that he should field alternate electors.

10 So it's something that people were already talking about even without knowing
11 how the election would come out. So it's something that in the several years before
12 2020 had been looked at by a number of scholars.

13 Q Okay. What prompted you to look into it before the 2020 Presidential
14 election?

15 A Just my general interest in the area, because I had lived through Bush v.
16 Gore, and I kept up on the scholarship related to it. And that's something that -- you
17 know, that's something that had been discussed by some of the scholars. But I just
18 didn't feel any particular expertise before November 2020.

19 Q Okay. Before the Presidential election, or before you entered into a
20 privileged relationship with the Trump campaign, did you do any writing on this topic?

21 A No, no. I just had read references to it in Law Review articles that mostly
22 dealt with the Electoral Count Act, which is a really fascinating issue of both constitutional
23 history and constitutional law. It's a really knotty -- it's a knotty issue about how to
24 analyze it and how it should be changed, if at all.

25 Q So for either -- the issues related to either the Electoral Count Act, or the

1 appointment of alternate electors, as you described it, did you have any conversations
2 before you entered into a privileged relationship with the Trump campaign with any
3 Republican officials or representatives of the State party?

4 A Oh, no, no. Yeah, I -- I didn't know any of these, you know, people other
5 than Eastman I'd worked on a case several years before that I -- he helped me on, that I
6 brought him to assist on.

7 But so, yeah, I had no involvement with electoral politics or Republicans prior to
8 2020. My only involvement was in Bush v. Gore and helping the Democrats in 2000.

9 Q Okay. And did you discuss either of those issues, the Electoral Count Act or
10 alternate electors, with John Eastman before the 2020 Presidential election?

11 A No.

12 [REDACTED] Okay. Thank you.

13 [REDACTED] Before we wrap up, maybe it makes sense for us just to take 2
14 minutes. So let's go off the record.

15 [Discussion off the record.]

16 [REDACTED] Okay. So we're back on the record with just a few more
17 questions for Mr. Chesebro.

18 BY [REDACTED]

19 Q Mr. Chesebro, other than your attorneys and your family members, have you
20 talked to anyone about the subpoena that you received from the select committee?

21 A No. I mean, yeah, immediate family and my attorneys. That's all. No.

22 Q Okay.

23 A Yeah. Let me think. I mean, the general -- the general subpoena, I've
24 talked with friends about the fact that I'm in the news and there's investigations going on,
25 but I've carefully avoided any reference to a subpoena, documents.

1 Oh, and I've never mentioned it to anyone, anyone affiliated with the Trump
2 campaign. I've carefully avoided any contact at all with them, so -- but the thing is there
3 are friends I've talked with that have expressed concern about the investigation. And
4 so -- but never mentioned the subpoena or documents or anything that could be, you
5 know, sort of coordinating efforts with anyone else.

6 Q Has anyone, including anyone on the Trump campaign or any affiliated
7 person, given you advice about what you should say in your testimony to the select
8 committee?

9 A No.

10 Q Okay. Has anyone affected or influenced the testimony that you've
11 provided to us today, again, other than your lawyers and your family members?

12 A No. That's why I've carefully avoided any contact or any financial help of
13 any kind so that I'm not -- you know, that I can be sure I'm not influenced in any way.

14

BY

15 Q Just a follow-up to that: Has anybody reached out to you from the Trump
16 campaign personally, as opposed to through your attorney, about your subpoena or the
17 testimony or documents that the select committee requested?

18 A No. But to be candid, I don't think it's -- I don't think it would be -- Adam,
19 in spring about the person that's also -- I'll just -- Jim Troupis and I got sued civilly in -- in
20 Wisconsin. So we had some contact about the fact that we were both being sued as
21 defendants.

22 So we -- you know, we talked about the subject of that lawsuit. But then
23 with -- and then we, you know, resolved to fight it, of course. But we then, carefully,
24 decided not to have any contact with each other, just -- just to be prudent.

25 Even though that has nothing to do with your inquiry, it just felt -- it just felt like

1 we should -- we should not have contact, because I think we're both sensitive to ensuring
2 that we meet our obligations to anyone investigating it, and that no one can feel that
3 we're somehow coordinating our efforts or shielding people, that sort of thing. So it's
4 something that we're just very sensitive to.

5 So that would be the only person that, you know, in -- that did anything for Trump
6 that I had any contact with, and that was back in March was the -- was the latest.

7 Q Have you communicated with John Eastman about any of the topics that
8 we've discussed today in your testimony?

9 A Oh, okay, I'm glad you asked me about that. Not about my testimony.
10 Not about anything about the inquiry directed to me, but I do recall when he was first
11 being investigated early in the year, January, February, he asked me for copies of
12 something he'd emailed me, because he couldn't find them.

13 And then I do recall he alerted me when there was a New York Times article in
14 June or July referring to him and Ginni Thomas. He told me that -- I'm sorry.
15 Then -- so -- so he asked me for some information. And then a couple times, like maybe
16 April and then in maybe June, he told me of things that had happened in his case, for
17 example, the judge finding a crime of fraud exception. He just -- because it concerned
18 me, he just alerted me that that had happened.

19 And then he alerted me about The New York Times story or whoever put it out
20 about Ginni Thomas, because that's somehow related to some communication we'd had.
21 So he was, as a courtesy, just making sure I knew about that.

22 But we -- we didn't discuss anything in terms of coordinating our efforts or, you
23 know -- so I think he was just being responsible and alerting me to something that might
24 have an impact on me.

25 Q Okay. So let's break that down a little bit. So first you mentioned that

1 Dr. Eastman asked you for some documents that he didn't have in his possession?

2 A And I looked for them. I couldn't find them either in electronic or hard
3 copy, and I -- you know, I told him that, you know, Sorry, I couldn't find it.

4 Q What was he looking for?

5 A I think it was a copy of a memo, like one of the memos from late December.
6 I don't recall the specifics. And eventually I assume he found it, but I wasn't able to
7 help.

1

2 [4:35 p.m.]

3

BY [REDACTED]

4

Q Do you recall if it's the December 23rd memo that we just discussed?

5

A It was -- I just don't -- I don't recall the specifics.

6

Q Okay. So you also mentioned that he talked to you about updates in his

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litigation with Chapman University. Can you tell me more about what he relayed to you

8

about what was going on in that litigation?

9

A My recollection was a Federal judge, I guess Judge Carter, I mean, I read

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about it subsequently -- had ruled that a memo -- a memo attributed to me, I guess the

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December 13th memo, had been ruled not subject to the attorney-client privilege, and he

12

just wanted me to know that, which I appreciated.

13

And then later, there was a story about suggesting that he had inside knowledge

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from Ginni Thomas about what the court might do, and it related to some email exchange

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between me and him that had been leaked in The New York Times. I think maybe one

16

of you quoted this. And so he just wanted to let me know that that had happened,

17

which I appreciated. So he was just, you know, just relaying things that had happened

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that were breaking publicly that he wanted me to know about. I guess -- I'm not sure

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why, but I thought it was a responsible thing for him to do.

20

But those are the three occasions when I recall contact from him, it was always

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initiated, but in response to a specific, you know, concern he had, not -- you know, not to

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share our thoughts about being investigated. But at this point, I don't think I was really

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being investigated, so it was really more one way that he was updating him -- he was

24

updating me on things that related to me that had come up through the investigation into

25

him.

1 Q The document that Dr. Eastman notified you had been ruled subject to the
2 crime-fraud exception, to attorney-client privilege, is that the same document from
3 December 13th that we discussed with you today?

4 A I believe that's the one, yes.

5 Q Okay. Other than Dr. Eastman, have you spoken to anyone? For instance,
6 have you spoken to Boris Epshteyn about anything that we've talked about in your
7 testimony today?

8 A No.

9 Q Okay. Anyone who is currently affiliated with President Trump or who
10 formerly worked on the Trump campaign who we haven't already discussed?

11 A About 2 or 3 weeks ago, maybe a month ago, Bruce Marks, who is, I think, a
12 Pennsylvania attorney that was involved in one of the cases, he contacted me asking if I
13 was essentially available to help on some sort of challenge. And I didn't say no, but, you
14 know, I -- so but I never heard back from him.

15 So I just -- but it had nothing to do with the 2000 or 2000 -- it had nothing to do
16 with the election, about the investigation into me, whatever. It was just -- I think it was
17 pending legal matters about Trump that apparently he was hoping maybe to get involved
18 in, and he wondered if I had an interest in working with him. So I just wanted to be
19 candid about that. But I've had no contact with him since, just he asked whether I might
20 be available.

21 Q Okay. Have you ever spoken with Jeff Clark, either during the post-election
22 period or since January 6th, about any involvement that he had assisting President Trump
23 after the 2020 election?

24 A Is Jeff Clark the -- the lawyer who was thought about for the -- for DOJ? I
25 mean, I just -- I want to make sure I know who you're talking about.

1 Q Yes, he was. I can represent to you that he was considered to replace Jeff
2 Rosen as acting attorney general.

3 A I have had no contact with him, and I never heard of him until a few months
4 ago in the press.

5 Q Okay. Since you mentioned the Chapman University litigation, I think that
6 it would be helpful to clarify this on the record. But, Mr. Chesebro, at numerous points
7 during your testimony to us today, in addition to asserting your Fifth Amendment rights,
8 you also asserted attorney-client privileges. We allowed you to make those assertions.
9 But so that the record is clear, our position is that consistent with Judge Carter's ruling,
10 there are numerous areas that we believe would not be protected by the relevant
11 privileges.

12 In particular, Judge Carter ruled that the December 13th email that you prepared
13 was subject to the crime-fraud exception. He more broadly ruled that efforts relating to
14 pressuring Vice President Pence related to his role in the joint session, efforts related to
15 casting alternate or fake electoral votes in the 2020 election, as well as efforts to launch
16 litigation with the intent of disrupting or delaying the joint session on January 6th, that
17 those efforts were also subject to the crime-fraud exception to attorney-client privilege.

18 He also made substantive privilege rulings freestanding from the crime-fraud
19 question. In particular, he said that communications related to the Joint Session of
20 Congress on January 6th or the meeting of electors on December 14th, 2020, were not
21 materials that were prepared in anticipation of litigation and would not be protected by
22 attorney work product. I just wanted to lay out our position there so that that's clear
23 for the record.

24 A Oh, yes, I understand.

25 The Witness. Mr. Kaufmann, there are categories where it's less clear there's a

1 privilege. The campaign may waive privilege or --

2 Mr. Kaufmann. Ken, Ken, Ken. Excuse me, Ken.

3 The Witness. Yeah.

4 Mr. Kaufmann. [REDACTED] was setting forth the committee's position on the record.

5 I don't think we need to respond to it at this point.

6 The Witness. Okay. Great. Okay. Sounds good.

7 Mr. Kaufmann. Thanks.

8

BY [REDACTED]

9 Q All right. So obviously we've asked you a number of questions today,
10 Mr. Chesebro. I can represent to you that these are not all the questions that we plan
11 to ask or all the documents that we would have shown you. Given your invocation of
12 your Fifth Amendment rights as well as other privileges to the questions posed, I think it
13 makes sense to end here.

14 But before we end, I'll just ask, do you intend to invoke Fifth Amendment rights or
15 any related privileges to any additional questions along the lines of those that we've
16 already asked you today?

17 A Yes, I would, because if I didn't, I would risk waiving the Fifth Amendment
18 privilege, which, of course, I don't want to do.

19 [REDACTED] Understood. So, with that, those are all of the questions that I
20 have for you today. Before we go off the record, I just sincerely want to thank you for
21 coming in and speaking with us today, and I'm sure that my sentiments are echoed by my
22 colleagues as well.

23 And, with that, I think we can go off the record.

24 [Whereupon, at 4:50 p.m., the deposition was concluded.]

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Certificate of Deponent/Interviewee

I have read the foregoing ____ pages, which contain the correct transcript of the
answers made by me to the questions therein recorded.

Witness Name

Date